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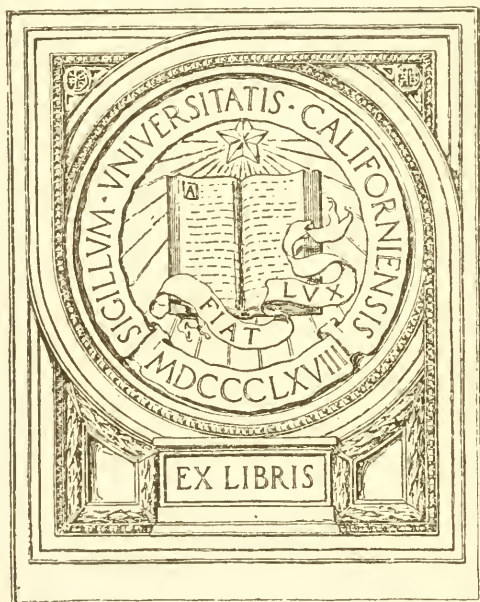
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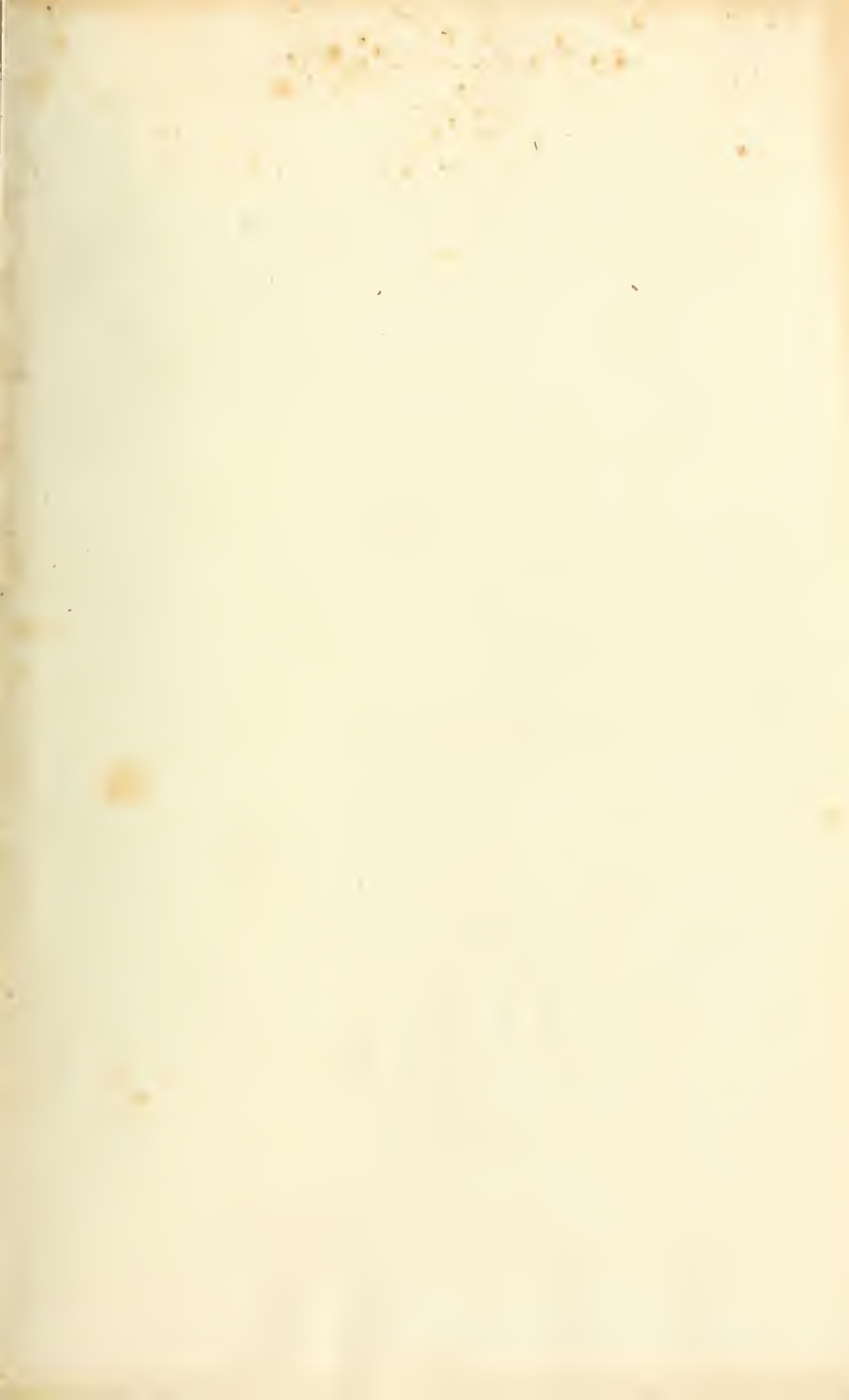
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# CONSTITUTION OF THE STATE OF TEXAS.

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ADOPTED BY THE CONSTITUTIONAL CONVENTION,  
BEGUN IN THE CITY OF AUSTIN, TEXAS, ON SEPTEMBER 6TH, 1875, AND FINISHED NOVEMBER 24TH, 1875;  
RATIFIED BY THE PEOPLE FEBRUARY 15TH, 1876;  
IN FORCE FROM THE 18TH DAY OF APRIL, 1876.

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WITH AMENDMENTS DECLARED ADOPTED OCTOBER 14TH, 1879; SEPTEMBER 25TH, 1883; DECEMBER 19TH, 1890; SEPTEMBER 22ND, 1891; DECEMBER 22ND, 1894; DECEMBER 18TH, 1896; DECEMBER 1ST, 1898.

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ANNOTATED BY  
D. B. AXTELL,  
OF THE TEXAS BAR.

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GAMMEL BOOK COMPANY,  
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## PREFACE.

A constitution is an historical instrument.

It is a thing made, in that it is made by the people; it is a maker, in that it makes and moulds the government of the people.

Many have been the Constitutions of Texas.

(1) The Federal Constitution of the United Mexican States, known as the Constitution of 1824. Followed by the Constitution and Laws of Coahuila and Texas, adopted eleventh of March, 1827, in which was included the Colonization Laws of Texas and Tamaulipas.

(2) The plans and powers of the Provisional Government of Texas, adopted Nov. 13th, 1835.

(3) The Constitution of the Republic, adopted by convention March 16th, 1836. Ratified by the people on the first Monday in September, 1836.

(4) The Constitution of 1845, and with it Texas became a part of the Union December 29th, 1845. Amended Jan. 6th, 1850, with reference to judges.

(5) In seceding from the Union the Constitution was amended March 25th, 1861.

(6) At the close of the Civil war amendments were made to the Constitution on the fourth Monday of June, 1866, which did not meet the approval of Congress.

(7) Under the Re-construction Acts a new Constitution was formed and ratified by the people first Monday in July, 1869, adopted by the Congress March 30th, 1870, and Texas came into the Union. Amendments ratified Dec. 2nd, 1873.

(8) Constitution of 1876; convention assembled September 6th, 1875; ratified by the people February 15th, 1876; took effect 18th of April, 1876.

In the course of time the old structure of the Constitution has undergone repairs. Amendments added, old clauses retired and have only an "*ex merito*" recognition. Amendments were made Oct. 14th, 1879; Sept. 25th, 1883; Dec. 19th, 1890; Sept. 22nd, 1891; Dec. 22nd, 1894; Dec. 18th, 1896, and Dec. 1st, 1898. Amendments to Art. 5, Secs. 2, 3, 5, 6, 8, 17 and 24 were proposed by the 17th legislature, but rejected by the people.

Amendments to Sec. 20, Art. 16; Sec. 24, Art. 3; Sec. 11, Art. 7, and 11 of Art. 5, were proposed by the 20th legislature, but were rejected by the people.

Amendments to Art. 7, Sec. 4; Art. 11, Sec. 3; Art. 11, by adding Sec. 11; Art. 8, by adding Sec. 20, proposed by the 24th and 25th legislature, but were rejected by the people.

Thus, as a new structure, does one find the Constitution of today; and leaving the old repairs as merely a matter of history the author has in this work only the Constitution as it stands today.

But this was not sufficient—decisions have been made under these sections—guide-posts which point the direction of constitutional authority, showing in what way laws have failed to receive constitutional sanction; and indicating the narrow way which must be followed if constitutional authority be obeyed.

With this object in view the decisions of the courts are placed under the respective heads of the Constitutions. And where sections are construed together references from one to the other are made.

Thus, with only short notice, can an attorney arm himself with the sharp decisions of constitutional law, and find himself prepared when a constitutional contest presents itself.

To the legislator this work should prove a help. Not only will it give him a history of cases, constitutional and unconstitutional, but it will aid him in the formation of his bills and may save him the mortification of having his bills declared in violation of the Constitution.

To the young attorney this collation of cases should help, both as a matter of history and as a convenience.

Now, in the bloom of its own strength, invigorated with new amendments, clothed with decisions, which explain and uphold its power, the Constitution stands today. And a copy in the form of this work is sent forth upon an unknown sea, to sink or swim as the public shall decide.

And in leaving for its journey the writer desires the work to carry along with it his thanks to Judge J. E. Boynton, of the Waco bar, for his many thoughtful and appreciative suggestions, which the writer here acknowledges to have been a benefit both to the work and himself; and the hope that the obscurity which gave birth to this work will not prevent it from receiving that communion and association with the bar, which the author, in his humble judgment, believes it deserves.

D. B. A.

Waco, Texas, July 26, 1900.





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ARTICLE I.

BILL OF RIGHTS.

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# CONSTITUTION OF TEXAS.

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## PREAMBLE.

Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

## ARTICLE I.

### BILL OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

SECTION 1. Texas is a free and independent state, subject only to the constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the states.

If Congress has passed an act under a grant of power found in the U. S. Constitution, or has regulated any particular matter, relating to interstate commerce, a state constitution cannot interfere. *Morris v. St.*, 62 T., 728.

A state can exercise certain powers, which have been delegated to Congress, until Congress legislates upon them, and among these powers may be mentioned powers to authorize corporations or persons to collect tolls and to improve water ways of the state. *Id.*

If part of a statute violates U. S. Constitution, and is so blended together that one part is dependent upon the other, the entire statute is void. *McLane v. Paschal*, 62 T., 102; *W. U. T. Co. v. State*, 62 T., 630.

The act of 1887, relating to foreign corporations, is unconstitutional in that it deprives the corporations of rights secured to them by the U. S. Constitution. *Land and Mortgage Co. v. Worsham*, 76 T., 557; 13 S. W. R., 384.

Law taxing telegraph messages is unconstitutional in so far as it applies to messages sent beyond the state. *W. U. T. Co. v. The State*, 62 T., 630.

The provision of the U. S. Constitution (Art. 6, Sec. 2), relating to the surrender of fugitives, is binding on each and all states, although Congress has passed no law on the subject. *Ex parte Hibler*, 43 T., 97.

Decisions of the U. S. Supreme Court, construing the Federal Constitution, will be followed in preference to our own state courts. *Osborne v. Barnett*, 1 App. C. C., Sec. 129.

In cases involving the constitutionality of the state laws with reference the U. S. Constitution, the Supreme Court of the U. S. should be followed. *Ex parte Asher*, 23 Cr. App., 662.

But in the *Clive* case, 36 Cr. App., 320, the court refused to follow this rule, and departed from the decision laid down in *Mattox v. St.*, 15 Supreme Court, 340.

In administering the criminal law of this state, it is incumbent upon the state courts to give effect to the provisions of the extradition treaty between the U. S. and Mexico. *Blandford v. St.*, 10 Cr. App., 627.

But see *Kelly v. St.*, 13 Cr. App., 159.

A Federal Constitution is limitation upon the Federal Government only except where states are mentioned. *Pitner v. St.*, 23 Cr. App., 366.

As far as the U. S. Constitution is concerned, a state may prosecute crime in other modes than by indictment. *Id.*

SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

An act providing that railroad companies failing to pay claims for stock killed, within a reasonable time, shall be liable for attorney fees, not exceeding ten dollars, does not infringe this section. And such an act is an exercise of the political power, declared by this section. *G. C. & S. F. Ry. Co. v. Ellis*, 87 T., 19; 26 S. W. R., 985.\*

SEC. 3. All free men, when they form a social compact, have equal rights, and no man or set of men, is entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

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\*While this case does not violate this section, it violates Art. 14, Sec. 1 of the U. S. Const., *New York Ins. Co. v. Smith*, 41 S. W. R., 687. U. S. Supreme Court Vol. 165, page 150 (October term, 1896).

An act providing that life Ins. Cos. failing to pay loss when due, are liable for twelve per cent of such loss in addition, is constitutional. *Union Central Ins. Co. v. Chowing*, 86 T., 654; 26 S. W. R., 982; (*Manhattan Ins. Co. v. Fields*, 26 S. W. R., 280; *Mutual Life Ins. v. Blodgett*, 27 S. W. R., 286; 8 C. A., 45, affirmed). \*

When legislation applies to particular bodies, imposing on them additional liabilities, it does not deny them the equal protection of the law, if all persons brought under its influence are treated alike, under like conditions. *Id.*

The fellow servant act of 1891 applies to all railroads, and does not deny any of them the equal protection of the law. *Campbell v. Cook*, 86 T., 630; 24 S. W. R., 972; *Peoples v. Rodgers*, 32 S. W. R., 798; *Ry. Co. v. Leighty*, 32 S. W. R., 799; *Ry. Co. v. Hohn*, 21 S. W. R., 942; 1 C. A., 197.

An act imposing a penalty upon railroads for failure to pay employees within reasonable time is unconstitutional, 4 App. C. C., Sec. a 324. *San Antonio and Aransas Pass v. Wilson*, 19 S. W. R., 911.

A curfew ordinance, prohibiting persons under 21 from the streets after 9 o'clock p. m., unless with parent or guardian, or in search of physician, deprives one of his rights. *Ex parte McCarver*, 46 S. W. R., 936 (Cr. App).

The occupation tax law of the 25th legislature requiring peddlers to pay taxes and exempting ex-soldiers and other enumerated classes of persons from the tax, violates this section. *Ex parte Jones*, 38 Cr. App., 482, 43 S. W. R., 513.

An act prohibiting the keeping of liquors for ones self or for another, with no intent of an illegal sale or some other improper purpose, abridges ones rights. *Ex parte Brown*, 38 Cr. App., 295.

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\*While these cases do not violate this section they violate Art. 14, Sec. 1 of the U. S. Constitution (*New York Ins. Co. v. Smith*, 41 S. W. R., 687).

A law compelling a seller of liquors to obtain license and place it in some conspicuous place, and which authorizes a prosecution for failure to do the same, does not deny one the equal protection of the law. *Bell v. State*, 28 Cr. App., 96.

Law abolishing capital punishment, as to an offender under the age of seventeen, does not violate this section. *Ex parte Walker*, 28 Cr. App., 246.

The act of 1871, known as the Sunday law, was not destroyed by the adoption of this constitution, and does not violate this section. *Bohl v. State*, 3 Cr. App., 683.

The Anti-Trust law of 1889 does not violate this section. *Houck v. Association*, 88 T., 184.

SEC. 4. No religious test shall ever be required as a qualification to any office or public trust in this state; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

SEC. 5. No person shall be disqualified to give evidence in any of the courts of this state on account of his religious opinions, or for want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

The oath must be taken in the mode most binding upon the conscience. *Id.*, *Brown v. State*, 2 Cr. App., 115.

A witness must testify under oath. *Bell v. State*, 2 Cr. App., 216.

One called as a jurymen, who refuses to make oath touching his qualifications on account of conscience, but who offered to affirm, should be allowed to affirm. *Riddles v. St.*, 46 S. W. R., 1058.

SEC. 6. All men have a natural and indefeasable right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Held that under this section securing to all men the right of freedom of worship, that a part of a petition setting up the religious belief of the defendant, as a cause of divorce, should be stricken out. *Haymond v. Haymond*, 12 S. W. R., 90.

SEC. 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor



shall property belonging to the state be appropriated for any such purposes.

SEC. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecution for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

An ordinance of a city, declaring a named paper a nuisance and forbidding its sale, curtails the liberty of the press. *Ex parte Neil*, 32 Cr. App., 275; 22 S. W., 923.

The laws of the state, defining and punishing libellous publications, are constitutional. *Morton v. St.*, 3 Cr. App., 510; *Belo. v. Wren*, 63 T., 686; *Express Printing Co. v. Copeland*, 64 T., 354.

Preventing a defendant in a suit for alienation of wife's affection, from talking to her, writing to her, or associating with her, is not a derogation of freedom of speech, press or locomotion. *Ex parte Warfield*, 50 S. W. R., 933 (Cr. App.).

SEC. 9. The people shall be secure in their persons, houses, papers and possessions from all unreason-

able seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Probable cause means a reasonable ground for suspicion, together with circumstances so strong as to make a cautious man believe that the person is guilty. *Land v. Obert*, 45 T., 539.

In a damage suit, requiring the party injured to submit to an examination, may be inconsistent with this section of the Constitution, but we understand that the Supreme Court has not determined this question. *Ry. Co. v. Johnson*, 72 T., 95; 10 S. W. R., 1; *Ry. Co. v. Underwood*, 64 T., 463; *G. C. & S. Fee v. Butcher*, 18 S. W. R., 583.

A warrant for arrest, and the complaint upon which it is issued, must state the accused name, if it be known, and if unknown, must give reasonable description of him. *Alford v. St.*, 8 Cr. App., 546.

There is a question as to how far an officer, in entering and searching a house for a witness, under an attachment, may go. *Bristow v. St.*, 36 Cr. App., 379.

SEC. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor.

And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia, when in actual service in time of war or public danger.

The admission of dying declarations does not violate the right that the accused shall be confronted with his witnesses. *Taylor v. St.*, 38 Cr. App., 552; 43 S. W. R., 1019; *Benavides v. St.*, 31 Cr. App., 579; *Burrell v. St.*, 18 Cr. App., 713; *Black v. St.*, 1 Cr. App., 368.

Answers of despatches sent by defendant can not be admitted against him. *Chester v. St.*, 23 Cr. App., 577; 5 S. W. R., 125.

Evidence against the accused, given by a witness on another hearing or on preliminary examination, can not be read against the accused. *Cline v. St.*, 36 Cr. App., 320; 36 S. W. R., 1099; *Steagald v. St.*; 22 Cr. App., 464; 3 S. W. R., 777; *Johnson v. St.*, 1 Cr. App., 333.

"Confronted with witnesses against him" means that on a trial in a criminal prosecution before a jury, the accused shall be confronted with witnesses adverse to him, before the trial jury. *Cline v. St.*, 36 Cr. App., 320; 36 S. W. R., 1099; *Lillard v. St.*, 17 Cr. App., 114. To be merely confronted with the witnesses is not enough. *Greenwood vs. St.*, 35 Cr. App., 588; *Steagaldt v. St.*, 22 Cr. App., 464; *Kerry v. St.*, 17 Cr. App., 178; *Sullivan v. St.*, 6 Cr. App., 319; *Johnson v. St.*, 1 Cr. App., 333; *Black v. St.*, 1 Cr. App., 368 (overruled).

This section excludes all evidence except that of confronting witnesses and depositions taken according to law. *Id.*

Right of defendant not to give evidence against himself is waived where he is sworn as a witness in his own behalf. *Pyland v. St.*, 33 Cr. App., 382; 26 S. W. R., 621; *White v. St.*, 33 Cr. App., 177; 26 S. W. R., 72; *Brown v. St.*, 38 Cr. App., 597; *Hargrove vs. St.*, 33 Cr. App., 431; *Thomas v. St.*, 33 Cr. App., 607; *Bain v. St.*, 38 Cr. App., 635.

Law compelling persons who are engaged in sale and slaughter of animals to make a report to the commissioners' court of cattle killed, is not compelling a person to give evidence against himself. *Aston v. St.*, 27 Cr. App., 574; 11 S. W. R., 637.

Testimony given at a former trial, by a witness who has since died, may be proven by a person who heard it and who can repeat it all. *Black v. St.*, 1 Cr. App., 368.

The exception to the rule "that the confession made by the accused, when under restraint, cannot be used in evidence against him" that when with such confession he makes a statement which is subsequently found to be true and which proves to establish his guilt, that it can be used in evidence, does not violate this section. *Brown v. St.*, 26 Cr. App., 314.

Testimony taken at a hearing of a habeas corpus is not admissible against defendant on his final trial. *Childers v. St.*, 30 Cr. App., 160.

Testimony given in defendant's absence, there being no waiver, conviction cannot stand. *Bell v. St.*, 32 Cr. App., 436.

The privilege of being confronted with the witnesses against him does not prevent documentary evidence to prove collateral facts which are admissible under the statutory or common law. *Patterson v. St.*, 17 Cr. App., 102; *May v. St.*, 15 Cr. App., 430; *Rogers v. St.*, 11 Cr. App., 608.

Act 319 authorizing officers to compel witnesses to testify as to violations of gaming law, does not violate this section. *Wright v. St.*, 23 Cr. App., 313.

Defendant cannot be asked if he has not previously been convicted of the same offense for which he is

again on trial. *Richardson v. St.*, 33 Cr. App., 518.

Defendant cannot be asked about an unwarranted confession made by him during arrest. *Ware v. St.*, 36 Cr. App., 597; *Wright v. St.*, Id., 227; *Morales v. St.*, Id., 234; (*Phillips v. St.*, 35 Cr. App., 480; *Ferguson v. St.*, 31 Cr. App., 93; *Quintana v. St.*, 29 Cr. App., 401, overruled).

Defendant cannot be compelled to testify that he has no regard for the Sunday law. *Levine v. St.*, 35 Cr. App., 647.

Defendant can be compelled to testify as to his criminal antecedents. *McCray v. St.*, 38 Cr. App., 609; *Derbyshire v. St.*, 36 Cr. App., 547; *Levine v. St.*, 35 Cr. App., 647; *Bratton v. St.*, 34 Cr. App., 477; *Armstrong v. St.*, Id., 249; *Jackson v. St.*, 33 Cr. App., 282; *Warren v. St.*, Id., 502; *Oliver v. St.*, Id., 541; *Mendly v. St.*, 29 Cr. App., 608.

Defendant can be compelled to exhibit his right leg for inspection after he had exhibited his left. *Thomas v. St.*, 33 Cr. App., 607.

See where causing defendant to dress in a certain way and ask witness if that was the way the defendant looked, was not compelling witness to testify against himself. *Gallagher v. St.*, 28 Cr. App., 247; *Bruce v. St.*, 31 Cr. App., 590; *Land v. St.*, 34 Cr. App., 330.

A witness need not answer that which would be used against him as a confession in another trial. *Ex parte Parker*, 37 Cr. App., 590; *ex parte Wilson*, 39 Cr. App.

Defendant, removing his shirt and showing bruises, was not compelling defendant to testify when the record did not show that he exposed his body or that the shirt was removed against his consent. *Leeper v. St.*, 29 Cr. App., 63.

Defendant has right to be represented by counsel. *Daughtery v. St.*, 33 Cr. App., 173; 26 S. W. R., 60.

The word "prosecution" means such as had before an impartial jury. *Cline v. St.*, 36 Cr. App., 350; 36 S. W. R., 1099; *Lillard v. St.*, 17 Cr. App., 114. The

word "impartial" discussed. *Randle v. St.*, 34 Cr. App., 43.

Imposing occupation tax law on lawyers does not deny one of the right to be represented by counsel. *Ex parte Williams*, 31 Cr. App., 262; 20 S. W. R., 580.

Defendant has a right to demand the nature and cause of action against him. *Simms v. St.*, 36 Cr. App., 154; *Evans v. St.*, 36 Cr. App., 32; *Stokes v. St.*, 35 Cr. App., 279; *Lockwood v. St.*, 23 Cr. App., 137; *Harris v. St.*, 32 Cr. App., 279; *Abrigo v. St.*, 29 Cr. App., 143; *Bonner v. St.*, Id., 223; *Woodall v. St.*, 25 Cr. App., 617; *Johnson v. St.*, 36 Cr. App., 202.

In regard to fair and impartial trials the state is no respecter of persons. *Massey v. St.*, 31 Cr. App., 371; *Stegald v. St.*, 22 Cr. App., 464.

Where jury separate while considering their verdict and some of them talked with prisoners about the case, held defendant did not have a fair trial by an impartial jury. *Burris v. St.*, 37 Cr. App., 583.

See where a continuance may deprive the defendant of his right to a speedy trial. *Venters v. St.*, 18 Cr. App., 118.

Speedy public trial discussed. *Ex parte, Thurman*, 26 T., 708.

A prisoner who has never demanded a speedy trial cannot involve the guarantee by a habeas corpus. *Hernandez*, 4 Cr. App., 425.

Defendant must be present

(1) When a witness is examined. *Bell v. St.*, 32 Cr. App., 436.

(2) When the jury or any member thereof is discharged. *Upchurch v. St.*, 36 Cr. App., 624; *Ruddie v. St.*, 29 Cr. App., 262.

(3) When a motion for a new trial is being heard and determined. *Gonzales v. St.*, 38 Cr. App., 62; *Gibson v. St.*, 3 Cr. App., 437; *Hill v. St.*, 41 T., 255.

(4) When the jury is called for additional instructions. *Benavides v. St.*, 31 Cr. App., 173; *Granger v. St.*, 11 Cr. App., 454; *Shipp v. St.*, 11 Cr. App., 46.



(5) When the verdict is returned. *Massey v. St.*, 31 Cr. App., 371.

Defendant need not be present

When a special venire is drawn in a capital case. *Cordova v. St.*, 6 Cr. App., 207; *Packet v. St.*, 5 Cr. App., 552.

By public trial is not meant that every person should be admitted. The character of the charge or the nature of the evidence may be such that public decency should require same be excluded. *Grimmett v. St.*, 22 Cr. App., 36.

This act is for the benefit of the defendant, and it is carried out if a part of the public are admitted while others are excluded. *Id.*

Where court room was not large enough for the witness and venire, it was not error to exclude the rest. *Kugadt v. St.*, 38 Cr. App., 681.

Act providing that a person may be convicted for banking upon the uncorroborated testimony of an accomplice is constitutional. *Wright v. St.*, 23 Cr. App., 313.

The right to a speedy trial does not mean that the accused shall have a speedy trial under all circumstances. Its object is to prevent the state from oppressing citizens by holding them over for an indefinite time and prevent the administration of justice. *Hernandez v. St.*, 4 Cr. App., 425.

The right to be heard has reference to trials in *nisi prius* courts and does not mean that he has a right to be brought personally before the court of appeals. *Tooke v. St.*, 23 Cr. App., 10; *Loyd v. St.*, 19 S. W. R., 137; *Roe v. St.*, 25 Cr. App., 33; 8 S. W. R., 463.

This sections demands that every fact necessary to a particular offence be alleged. *Colcodt v. St.*, 37 Cr. App., 245; *Casgrove v. St.*, 37 Cr. App., 249; *Nasbits v. St.*, 36 Cr. App., 5; *Crae v. St.*, *Id.*, 90; *Cummings v. St.*, *Id.*, 152; *Cothran v. St.*, *Id.*, 196; *Hathway v. St.*, *Id.*, 261; *Bristow v. St.*, *Id.*, 379; *Jackson v. St.*, 34 Cr. App., 38; *Evans v. St.*, *Id.*, 110; *Clark v. St.*, 32 Cr. App., 412; *Luter v. St.*, *Id.*, 69; *Curtis v. St.*, 31

Cr. App., 39; *Graves v. St., Id.*, 65; *Martin v. St., Id.*, 27; *Brown v. St.*, 26 Cr. App., 540; *Gray v. St.*, 24 Cr. App., 611; *Gage v. St.*, 22 Cr. App., 123; *Brown v. St.*, 15 Cr. App., 581; *Huntsman v. St.*, 12 Cr. App., 619; *Goody v. St.*, 8 Cr. App., 128; *Williams v. St.*, 37 Cr. App., 238; *St. v. Duke*, 42 T., 431.

A conviction for embezzlement can not be had on an indictment for theft. *Huntsman v. St.*, 12 Cr. App., 619, and Art. 714, which authorized such a conviction is unconstitutional. *Id.* (*Whitwith v. St.*, 11 Cr. App., 414, overruled).

The common sense indictment bill is unconstitutional. *Allen v. St.*, 13 Cr. App., 30; *Williams v. St.*, 12 Cr. App., 395.

The common sense indictment bill for theft is unconstitutional. *Florsen v. St.*, 13 Cr. App., 337.

The common sense indictment bill for rape is unconstitutional. *Brinster v. St.*, 12 Cr. App., 612.

Law authorizing substitution of lost indictment does not violate the guarantee, that no person shall be held to answer for a criminal offense, unless on an indictment of the grand jury. *Withers v. St.*, 21 Cr. App., 210; *Schultz v. St.*, 15 Cr. App., 258; *Gillespie v. St.*, 16 Cr. App., 641.

Law prohibiting banking games is constitutional. *Evans v. St.*, 22 S. W. R., 18.

An act depriving defendant of his right of attachment is unconstitutional. *Homan v. St.*, 23 Cr. App., 212.

Act of the 18th legislature "To provide for the payment of attached witnesses in felony cases" deprives the defendant of his right of attachment and violates this section. *Id.*

The legislature can not deprive the defendant of his process for witnesses. *Roddy v. St.*, 16 Cr. App., 502.

This section guarantees the right of cross-examination. *Bell v. St.*, 2 Cr. App., 216.

A county official may be removed for official misconduct, although he has not been convicted on an in-



dictment. *Bland v. St.*, 38 S. W. R., 253; 38 Cr. App., 253. (See Art. 15, Sec. 7).

The statute giving trial judges discretion to grant or refuse continuances does not deprive a citizen of his process for witnesses. *Lillard v. St.*, 17 Cr. App., 114.

SEC. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law.

If the evidence is so strong as to lead a well guarded mind to the conclusion that an offense has been committed, and that the defendant is the guilty one, bail will be refused. *Ex parte Smith*, 23 Cr. App., 100; *ex parte Coldiron*, 15 Cr. App., 464; *ex parte Beacom*, 12 Cr. App., 318.

All prisoners are bailable except where proof is evident. *Ex parte Cook*, 2 Cr. App., 388.

The word "evident" means "plainly," "clearly" and "obviously." *Ex parte Boyette*, 19 Cr. App., 17; *ex parte Beacom*, 12 Cr. App., 318; *ex parte Foster*, 5 Cr. App., 625.

Proof is evident, if the evidence adduced on application for bail would sustain a verdict, convicting the applicant of murder in the first degree. *Ex parte Foster*, 5 Cr. App., 625; *ex parte Cook*, 2 Cr. App., 389.

Proof is not evident by a mere disagreement of the jury. *Ex parte England*, 23 Cr. App., 90; 3 S. W. R., 714; *Webb v. St.*, 4 Cr. App., 167.

For failure of evident proof, to justify refusal of bail, see *ex parte Cochran*, 20 Cr. App., 242; *ex parte Terry*, Id., 486; *ex parte Wilson*, Id., 498; *ex parte Allen*, 22 Cr. App., 201; *ex parte Hay*, 23 Cr. App.,

585; *ex parte McDowell*, Id., 67; *ex parte Rucker*, 6 Cr. App., 81; *ex parte Bomar*, 9 Cr. App., 610; *ex parte Random*, 12 Cr. App., 145; *ex parte Gibstrop*, 14 Cr. App., 240; *Ruston v. St.*, 15 Cr. App., 324; *ex parte Pace*, 16 Cr. App., 541.

This section secures the right of bail only to those who have not been tried and convicted in the district court. *Ex parte Schwartz*, 2 Cr. App., 74; *ex parte Ezell*, 40 T., 451; *Warnock v. St.*, 6 Cr. App., 450; *ex parte McCarkle*, 29 Cr. App., 20.

Party tried and convicted can not be granted bail during appeal. Id.

Right of bail does not obtain in extradition cases. *Ex parte Erwin*, 7 Cr. App., 289.

The term "all prisoners" does not mean all prisoners under all circumstances. *Ex parte Ezell*, 40 T., 451.

This section does not prohibit bail after indictment is found. *Ex parte Ezell*, 40 T., 451; *ex parte Schwartz*, 2 Cr. App., 80; *ex parte Erwin*, 7 Cr. App., 295; *Pate v. St.*, 21 Cr. App., 192.

Defendant is not entitled to bail upon the ground of threats alone. *Ex parte Taylor*, 33 Cr. App., 531; *ex parte Mosly*, 31 T., 566.

Proof may be evident, notwithstanding conflicting evidence. *Ex parte Jones*, 31 Cr. App., 422. And conflicting evidence will not give reasonable doubt. *Ex parte Evers*, 29 Cr. App., 539; *ex parte Rothchild*, 2 Cr. App., 560. (*Ex parte Miller*, 41 T., 213, overruled).

For evidence justifying refusal of bail see *ex parte Ebbs*, 35 Cr. App., 406; *ex parte Myers*, 33 Cr. App., 204; *ex parte Jones*, 31 Cr. App., 422; *ex parte Johnson*, 30 Cr. App., 279; *ex parte Evers*, 29 Cr. App., 539; *Smith v. St.*, 23 Cr. App., 100; *ex parte Williams*, 18 Cr. App., 653; *ex parte Beacom*, 12 Cr. App., 318; *ex parte Rucker*, 6 Cr. App., 81; *ex parte Rothchild*, 2 Cr. App., 560; *ex parte Taylor*, 33 Cr. App., 531; *Drury v. St.*, 25 T., 45; *Herrin v. St.*, 33 T., 38.

SEC. 12. The writ of *habeas corpus* is a writ of right, and shall never be suspended. The legislature shall enact laws to render the remedy speedy and effectual.

Habeas corpus is available to one whose constitutional right to a trial in due course of law is withheld for an unreasonable length of time. *Rutherford v. St.*, 16 Cr. App., 649.

It will not be allowed where the appellant is restrained of his liberty by the sheriff under a commitment from district court, after conviction in a felony case. *Ex parte Fuller* and *ex parte Wimberly*, 19 Cr. App., 241; *ex parte Ezell*, 40 T., 451; *ex parte McGrew*, 40 T., 476; *Darrah v. St.*, 44 T., 388.

A party has the right of habeas corpus to inquire into the constitutionality of the law under which he was arrested. *Ex parte Mato*, 19 Cr. App., 117. (*Parker case*, 5 Cr. App., 579, overruled).

A party has the right of habeas corpus: For reduction of excessive fine or bail: To be relieved from a judgment or order of court which is a nullity. *Ex parte Kilgore*, 3 Cr. App., 247; *Martin v. St.*, 16 Cr. App., 265. To be relieved from any proceedings that are void. *Ex parte Mato*, 19 Cr. App., 112; *ex parte Kramer*, 19 Cr. App., 123; *ex parte Kilgore*, 3 Cr. App., 247; *ex parte Slarem*, Id., 662; *ex parte McGill*, 6 Cr. App., 498; *ex parte Grace*, 9 Cr. App., 381; *ex parte Boland*, 11 Cr. App., 159. To test the validity of a city ordinance. *Ex parte Gregory*, 20 Cr. App., 210.

A party does not have the right to habeas corpus: To serve purposes of appeal writ of error or certiorari. *Ex parte Schwartz*, 2 Cr. App., 74; *ex parte Oliver*, 3 Cr. App., 345; *ex parte Mabry*, 5 Cr. App., 595; *ex parte Boland*, 11 Cr. App., 159. It must reach errors which will render judgment void; to render it voidable

is not sufficient. *Ex parte McGill*, 6 Cr. App., 498; *ex parte Schwartz*, 2 Cr. App., 75.

The writ can not be issued to show that the person is restrained of his liberty by virtue of a judgment and conviction of a felony upon an indictment presented by an illegal indictment. *Ex parte Fuller*, 19 Cr. App., 241; *ex parte Ezell*, 40 T., 451; *ex parte McGrew*, Id., 476.

Former jeopardy can not be availed of by habeas corpus. *Pitner v. St.*, 44 T., 577; *Griffin v. St.*, 5 Cr. App., 457.

The writ can not be used to attack a judgment upon the ground that the judge or justice rendering the judgment was not legally the officer. *Ex parte McCall*, 2 Cr. App., 497.

SEC. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law.

Arts. 518, R. S. 1895, in so far as it requires a payment of taxes as a precedent to making defense to a void claim title, under a tax sale, is void. *Eustis v. City of Henrietta*, 87 T., 14; 39 S. W. R., 567.

Statutes making insurance companies failing to pay loss when due, liable for twelve per cent damages, together with attorney fees, can not be construed as imposing excessive fines. *Mutual Ins. Co. v. Walden*, 26 S. W. R., 1012; *Union Cent. Life Ins. Co. v. Chowing*, 86 T., 654; 26 S. W. R., 982;\* *Mutual Life Ins. Co. v. Simpson*, 28 S. W. R., 837.

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\*See foot note, page 14.

Act of 1889, requiring bonds in case of receivers, violates this section, because it denies to receivers the right to have judgments against them reviewed on the same terms as those prescribed in the case of other persons. *Dillingham v. Putnam*, 14 S. W. R., 303.

Process under the power given to inspector of hides is due process of law. *Begman v. Black*, 47 T., 558.

"Due process of law" means law of the state. *Leeper v. St.*, 139 U. S., 462; 35 Book, 225.

An error in a charge to a jury does not deny one of due process of law. *Davis v. St. of Texas*, 139 U. S., 651; 35 Book, 300.

Whether bail is excessive or not depends largely upon the pecuniary condition of the party. *Hutchins v. St.*, 11 Cr. App., 28.

Legislation in regard to courts must be so construed as not to violate this section. *Chivarrio v. St.*, 15 Cr. App., 330; *Barr v. St.*, 16 Cr. App., 333.

For illustration of excessive bail see *ex parte Wilson*, 20 Cr. App., 498.

If the assessed punishment is within the limits prescribed by law, it is not excessive. *League v. St.*, 4 Cr. App., 147; *Johnsou v. St.*, 5 Cr. App., 423; *Drake v. St.*, Id., 649; *Williams v. St.*, 6 Cr. App., 147; *Smith v. St.*, 7 Cr. App., 414.

Two years for horse theft is not excessive. *Jones v. St.*, 14 Cr. App., 85.

A conviction for crime not made to appear on the record, is not a conviction by due process of law. *Rowland v. St.*, 12 Cr. App., 418.

The word "excessive" defined. *McConnell v. St.*, 13 Cr. App., 390.

Successive imprisonment upon separate convictions is not excessive punishment. *Lillard v. St.*, 17 Cr. App., 114.

Sixty years imprisonment for murder in the second degree is not excessive. *Childs v. St.*, 2 Cr. App., 36.

A five hundred dollar fine and twelve months' imprisonment in the county jail for an aggravated assault is not excessive. *Ingleu v. St.*, 36 Cr. App., 472.

A fine of forty dollars and ten days in county jail for exhibiting a gaming bank is not excessive. *Williams v. St.*, 6 Cr. App., 147.

SEC. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

A defendant convicted for manslaughter on a defective indictment for murder, cannot subsequently be tried for murder. *Mixon v. St.*, 35 Cr. App., 458; 34 S. W. R., 290.

Where indictment includes several degrees and defendant is tried and convicted of the lesser, he is acquitted of the higher degrees of said offense. *Robinson v. St.*, 21 Cr. App., 160; 17 S. W. R., 632.

If the indictment was a good and valid one it acquitted one defendant of all the degrees above what he was convicted. *Parker v. St.*, 22 Cr. App., 105; 3 S. W. R., 100; *Fuller v. St.*, 30 Cr. App., 559; 17 S. W. R., 1108; *Conde v. St.*, 35 Cr. App., 98; 34 S. W. R., 286.

An acquittal of an offense is a bar to subsequent prosecutions regardless of the validity of the indictment. *Mixon v. St.*, 35 Cr. App., 458; 34 S. W. R., 280.

A person may be tried separately for forgery and altering the same instrument and an acquittal of the former will not be a bar to the conviction of the latter. *Hooper v. St.*, 29 Cr. App., 614; 17 S. W. R., 1066.

Former jeopardy obtains where (1) evidence adequate to one will sustain the other; (2) if the indictment sets out like offenses and relate to one transaction. *Herera v. St.*, 35 Cr. App., 607.

To sustain the plea of former jeopardy, party must prove that the acts which constituted the offense of the



former conviction are the very ones which constitute the offense on trial. *Kain v. St.*, 16 Cr. App., 282.

A dismissal before jeopardy has attached is not a bar to another prosecution for the same offense. *Ex parte Porter*, 16 Cr. App., 321; *ex parte Rogers*, 10 Cr. App., 655; *Quitow v. St.*, 1 Cr. App., 47.

The doctrine of former jeopardy has no application to proceedings had before examining courts. *Ex parte Porter*, 16 Cr. App., 321.

This doctrine does not apply where a person has been convicted, case appealed and reversed. *Thomas v. St.*, 9 Cr. App., 649.

The term "same offense" means the same criminal act, whether the offense be the same *eo nomine* or not. *Hirshfield v. St.*, 11 Cr. App., 207; *Adams v. St.*, 16 Cr. App., 162.

If jeopardy has once attached, and the court, without consent of the accused, and before the verdict is rendered, discharges the jury, the person can not be tried for the same offense. *Powell v. St.*, 17 Cr. App., 345.

If the verdict is insufficient and void and the trial court declared it a nullity, the defendant may be again put on trial. *Robinson v. St.*, 23 Cr. App., 315; *Dubose v. St.*, 13 Cr. App., 419.

"Former jeopardy" attaches where a person has been placed on trial on a valid indictment for an offense involving life or liberty in a competent court, and a competent jury has been empaneled, sworn and charged with his case. *Powell v. St.*, 17 Cr. App., 345; *Mosely v. St.*, 33 Cr. App., 671. (*Taylor v. St.*, 35 T., 97, overruled). *Pizano v. St.*, 20 Cr. App., 139; *Vestal v. St.*, 3 Cr. App., 652; *Parchman v. St.*, 2 Cr. App., 228. A person is in jeopardy only when this is done. *Ex parte Porter*, 16 Cr. App., 321.

This section extends to prosecutions for misdemeanors also; *Brink v. St.*, 18 Cr. App., 344. (*Notice Vestal v. St.*, 3 Cr. App., 648).

If the offense constitutes an essential part of another, and the both are one transaction, the plea will lie

except as to theft and burglary. *Herera v. St.*, 35 Cr. App., 607; *McElmory v. St.*, 21 Cr. App., 691.

But the plea will not hold good where the two indictments are so different as to prevent the same evidence from sustaining both. *Mercer v. St.*, 17 Cr. App., 452; *Stewart v. St.*, 35 Cr. App., 174.

Defendant plead not guilty to indictment charging him with theft, State discovering the name of the owner of the property stolen, was wrong, entered a *nolle prosequi* and afterwards arranged the defendant for the same offense, held plea not good. *Branch v. St.*, 20 Cr. App., 599; *Jackson v. St.*, 37 Cr. App., 128; *Yeager v. St.*, 41 S. W. R., 621.

Jeopardy attached where jury was empaneled and sworn, indictment read, defendant entered plea, and the court continued the case upon motion of county attorney, who had announced ready upon incorrect information from the sheriff. *Pizano v. St.*, 20 Cr. App., 139.

Where there was a disagreement of the jury and defendant agrees to their discharge, provided the case is continued to the next term of the court, jeopardy does not attach. *Arcio v. St.*, 28 Cr. App., 198.

Plea was good where the jury, after considering their verdict for three hours, were discharged, there being no reason in the record for the same. *Hooper v. St.*, 42 S. W. R., 398, (*Powell v. St.*, 17 Cr. App., 345; *Mosley v. St.*, 33 T., 671; *Taylor v. St.*, 35 T., 97, overruled).

Discretion in courts in discharging juries is no ground for a plea of former jeopardy, unless that discretion is abused. *Peun v. St.*, 36 Cr. App., 140; *Clark v. St.*, 28 Cr. App., 189; *Smith v. St.*, 22 Cr. App., 196; *Brady v. St.*, 21 Cr. App., 659; *Schnider v. St.*, 17 Cr. App., 408; *Varnes v. St.*, 20 Cr. App., 107.

The right secured by this section receives the same construction as at common law. *Thomas v. St.*, 40 T., 36. And the legislature can not abrogate its settled construction. *Powell v. St.*, 17 Cr. App., 345.

A conviction for an assault with intent to murder



prevents a subsequent prosecution for robbery committed at the same time and by means of the same assault. *Herera v. St.*, 35 Cr. App., 607; *Moore v. St.*, 33 Cr. App., 166.

This section has reference to cases affecting life and liberty. *Vestal v. St.*, 3 Cr. App., 648.

The plea may be plead after the jury has been empaneled, and plea of not guilty entered. *Pizano v. St.*, 20 Cr. App., 139.

If the indictment is so defective that no valid judgment can be rendered upon it, jeopardy does not attach. *Williams v. St.*, 34 Cr. App., 433; *Timon vs. St.*, Id., 363; *Grisham v. St.*, 19 Cr. App., 504; *ex parte Porter*, 16 Cr. App., 321; *Simco v. St.*, 9 Cr. App., 338; *Parchman v. St.*, 2 Cr. App., 228; *O'Conner v. St.*, 28 Cr. App., 288.

The mere fact that indictments for the same offense are pending does not constitute jeopardy. *Bonner v. St.*, 29 Cr. App., 223; *William v. St.*, 20 Cr. App., 357; *Schinder v. St.*, 15 Cr. App., 394; *Bailey v. St.*, 11 Cr. App., 140; *Cook v. St.*, 8 Cr. App., 659; *Hardin v. St.*, 4 Cr. App., 355.

If the court trying the first case had no jurisdiction of the offense jeopardy does not attach. *Ex parte Rogers*, 10 Cr. App., 655; *Grisham v. St.*, 19 Cr. App., 504; *Parchman v. St.*, 2 Cr. App., 228.

Former jeopardy does not attach; (1) if the second indictment does not charge the same offense as the former; (2) if the prior indictment was too defective to support a judgment; (3) if the court trying the case had no jurisdiction of the case; (4) if the verdict was set aside on defendant's motion for a new trial. *Parchman v. St.*, 2 Cr. App., 228.

If a person erroneously convicted has suffered punishment he cannot be prosecuted a second time for the same offense. *Davis v. St.*, 37 Cr. App., 359.

Plea does not hold good where a new trial has been granted. *Maines v. St.*, 37 Cr. App., 617; *Sterling v. St.*, 25 Cr. App., 716.

Jeopardy does not attach where a court discharges

a jury without consent of the defendant on account of the critical illness of one of the jurymen's children. *Woodard v. St.*, 58 S. W. R., 135.

SEC. 15. The right of trial by jury shall remain inviolate. The legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

The right of trial by jury, guaranteed by this section, prohibits the Court of Appeals from rendering judgment when the evidence is conflicting. *Choate v. S. and A. Pass. Ry. Co.*, 91 T., 406; 44 S. W. R., 69.

The law providing for a jury for defendants, where judgments are rendered by default, but not giving the same right to the plaintiff, is unconstitutional. *Ry. Co. v. Morris*, 68 T., 49, 3 S. W. R., 457.

The act of the 23rd legislature, relating to the sale of liquors, is constitutional. *Peavy v. Gloss*, 90 T., 89, 37 S. W. R., 990.

This right of trial by jury does not exist in probate cases. *Cockrell v. Cox*, 65 T., 672.

The jury law passed by the 15th legislature was not an infringement of this section. *Brown v. Chene-worth*, 51 T., 469.

In a misdemeanor case the defendant may waive a jury. *Rasberry v. St.*, 1 Cr. App., 664; *Stell v. St.*, 14 Cr. App., 59.

This section does not prevent the passage of a law regulating the granting or refusing new trials, or regulating the continuances of the same. *Lillard v. St.*, 17 Cr. App., 114.

A conviction can stand where a juror in a felony case was permitted by the court to separate from the jury with consent of parties and unaccompanied by an officer. *McCampbell v. St.*, 37 Cr. App., 607.

This section applies to a forfeited bail case. Short v. St., 16 Cr. App., 44.

An act making the payment of the United States special tax as a seller of liquors, *prima facie* evidence that the person paying the same was selling liquors, does not violate this section. Floeck v. St., 34 Cr. App., 314.

SEC. 16. No bill of attainder, *ex post facto* law, or any law impairing the obligation of contracts, shall be made.

An act providing the rate of interest when none is specified in the note, is not retrospective, so as to apply to causes of action therefore accrued. Landa v. Obert, 25 S. W. R., 342, 3 C. A., 620.

Act of the twenty-fifth legislature giving preferences in the earnings to a claim, which, before the enactment of the law, had no lien on such earnings, violates the obligation of a contract. Giles v. Stanton, 86 T., 620, 26 S. W. R., 516.

Vested rights means only such rights as spring from contract. It can not refer to contracts or rights growing out of tort or actions in their nature *ex delicto*. 2 App. C. C., Sec. 61.

A debtor has not a vested right to any particular remedy or that the creditor's remedy against him as to exemptions shall not be altered or repealed. 1 App. C. C., Sec. 1341.

The remedy possessed by the state, when and where a contract is to be performed, is a part of the contract, and no law can be passed affecting that remedy. McLane v. Paschal, 62 T., 102.

The legislature may change or modify the remedy for the enforcement of any contract, and limit within a reasonable way the time for its exercise. Treasure v. Wygall, 46 T., 447; DeCordova v. Galveston, 4 T., 470; McLane v. Paschal, 62 T., 102; Worsham v.

Stevens, 66 T., 91; 17 S. W. R., 404; Parker v. Buckner, 67 T., 23; Ward v. Hubbard, 62 T., 559.

While the legislature has the power to extend the remedy by enlarging the area of venue, still such intent must be evident before the act will be given a retroactive effect. Baines v. Jemison, 86 T., 118.

See where the legislation affected the remedy and not the right of the parties. H. & T. C. v. Graves, 50 T., 202.

The legislature cannot repeal an act, creating a municipal corporation, to the injury of creditors of the corporation. Morris & Cummings v. State, 62 T., 729.

Retroactive laws are such as give a right where none before existed. Mellinger v. City of Houston, 68 T., 48.

The imposition of interest on taxes already due is not *ex post facto*. League v. St., 57 S. W. R., 34.

Statute providing for the administration of estates of insolvent debtors and permitting a voluntary assignment for benefit of creditors who will consent and execute a release, does not impair the obligation of a contract. Keating v. Vaughn, 61 T., 518.

A person who has located a valid land certificate upon vacant public land and has caused the same to be surveyed and certificate returned to the land office in the prescribed time, has a vested right. Snider v. Methvin, 60 T., 487.

Act requiring passenger trains to stop not less than five minutes at each station does not violate the right of the company. Ry. Co. v. LeGerse, 51 T., 189.

This section protects the citizen in every right existing before the enactment of any law designed to deprive him of it, whether it be a right of property or not. Mellinger v. Houston, 68 T., 38.

Where a subsequent law so changes the remedy as to substantially lessen the value of the contract, it violates this section. Parker v. Buckner, 67 T., 20; 2 S. W. R., 746.

A penalty in the shape of attorney's fees for prose-

cutions of insurance companies cannot be imposed by retrospective law. *Ins. Co. v. Ray*, 50 T., 511.

A law validating an ordinance of a municipality, passed without charter authority, is not retroactive. *Morris & Cummings v. Gussett*, 62 T., 729; *Cox v. Ry. Co.*, 68 T., 230.

An act of 1892, providing that when the courts of Civil Appeals was formed, all cases belonging to those courts shall be transferred to them, and making all sureties on the appeal bonds liable to the Civil Appeal courts to which the case was transferred, does not violate the obligation of a contract. *Bank v. Mussette*, 86 T., 708, 26 S. W. R., 1075.

Act of 1889, prescribing time and place of sale of all lands thereafter to be sold by trust deed, is unconstitutional in so far as it refers to trust deeds executed before its enactment. *Building and Loan Co. v. Hardy*, 86 T., 610, 26 S. W. R., 497.

Act of 1895, providing for the survival of causes of actions for personal injuries, does not impair any vested right. *H. & T. C. v. Rogers*, 39 S. W. R., 1112.

This section is not violated by a decision of the state court which overrules previous decisions, though such latter ruling is applied to rights acquired on the faith of the former decision. *Storrie v. Cortes*, 90 T., 283.

The estate of one sentenced to imprisonment for life does not descend or vest as in the case of death. *Davis v. Lanning*, 85 T., 39; 19 S. W. R., 846.

Property rights of a county are protected by this section. *Milan County v. Bateman*, 54 T., 154.

An act reversing a decision of the Supreme Court upon the unconstitutionality of an act, is unconstitutional. *Milan County v. Bateman*, 54 T., 154.

A contract securing a creditor a right to a specific remedy whereby he may enforce a pecuniary obligation, without resorting to the courts, is not subject to such modifications and changes as may lawfully be made in ordinary remedies prescribed by law. *Loan Co. v. Hardy*, 86 T., 610, 26 S. W. R., 497.



The legislature has no power to confer on any private person power to sell the property of another, at such time and place, and on such notice as it may prescribe without regard to or in violation of any contract rights parties may have made. *Id.*

A person has no vested rights in a pension. *Chalk v. Darden*, 47 T., 438.

The legislature may limit within reasonable bounds the time for claimants to avail themselves of any remedy. *Parker v. Buckner*, 67 T., 20, 2 S. W. R., 746.

Sec. 4 of act of 1883, providing that all claims audited as valid under act of 1879, etc., applied to a remedy and did not interfere with any vested right. *Id.*

Legislation which forbids the introduction of such evidence of a prior contract as was admissible and necessary to the validity of the contract at the time it was made, impairs the obligation of the contract, unless it provides some other method for making sufficient proof of the facts accessible to the person who is compelled to make the proof. *Texas-Mex. Ry. Co. v. Locke*, 74 T., 370, 12 S. W. R., 80.

Where persons owning grants were not required to remain in possession as a condition upon which their rights depended, a subsequent law making possession the only evidence of proving title valid when it was issued, would impair the obligation of a contract. *Id.*

A person who has located a valid land certificate upon vacant land and caused the same to be surveyed and the survey and certificate returned to the land office within the time prescribed by law, has a vested right, which cannot be disturbed. *Snider v. Methin*, 60 T., 489; *Sherwood v. Fleming*, 25 T. Sup., 428. (*Hart v. Gibbons*, 14 T., 215; *Smith v. Taylor*, 34 T., 607, discussed).

A valid location on vacant lands and surveys thereunder is a vested right. *Milan County v. Blake*, 54 T., 169.

Where a valid location of land certificate confers a vested right, it is subject to the right of the legisla-

ture to prescribe a time within which the owner must perform the remaining acts required by law to complete his title. *Snider v. Methin*, 60 T., 489.

An act granting further time to purchasers of school lands in which to pay the interest thereon does not violate this section. *Barker v. Torrey*, 69 T., 7.

Persons who have only made application for surveys, prior to the act of January 22, 1883, which withdrew from sale the land put on sale by the act of 1871, and the amendments thereto, had no vested right to the land which they sought to purchase. *St. v. Work*, 63 T., 148; *White v. Martin*, 66 T., 342.

Act of 1889, reducing from one dollar to fifty cents the rate per day allowed a county convict as credit on his fine and costs, when working out the same, does not apply to a judgment which was rendered and in process of execution prior to the passage of the act. *In re Hunt*, 13 S. W. R., 145 (Cr. App.)

*Ex post facto* laws are not such as modify the rules of criminal laws, but only those that create or aggravate the crime or increase the punishment or change the rule of evidence for purpose of conviction. *McInturf v. St.*, 20 Cr. App., 335.

A law warranting conviction on less or different evidence than was necessary when the offense was committed is *ex post facto*. *Caloway v. St.*, 7 Cr. App., 585.

A person has no vested right in any particular court. *McInturf v. St.*, 20 Cr. App., 335; *March v. St.*, 44 T., 64.

A statute providing for cumulative sentences is *ex post facto*. *Haunahan v. St.*, 4 Cr. App., 644; *Prince v. St.*, 44 T., 480; *Baker v. St.*, 11 Cr. App., 262.

Changing the punishment of murder from death to either death or imprisonment for life, the change being made after the murder is committed, is not *ex post facto*. *McInturf v. St.*, 20 Cr. App., 335.

License to practice law is not a vested right and may be revoked by the state. *Longuille v. St.*, 4 Cr. App., 312.

An act enacted after the party has been indicted

for seduction, permitting the seduced female to testify, is not *ex post facto* to the party indicted. *Mrous v. St.*, 31 Cr. App., 597, 21 S. W. R., 764.

A law enlarging the class of persons who can testify, relates only to the mode of procedure and can refer to offenses previously committed. *Id.*

A law which assumes to warrant a conviction on less or different evidence than was necessary when the offense was committed, is *ex post facto*. *Calloway v. St.*, 7 Cr. App., 585.

Law authorizing amendments to indictments can refer to indictments pending, without being *ex post facto*. *Manning v. State*, 14 T., 402.

Law authorizing a conviction for one offense on a prosecution for another, is *ex post facto*. *Simco v. St.*, 8 Cr. App., 406.

Changing mode of objecting to a grand jury is *ex post facto*. *Martin v. State*, 22 Cr. App., 214.

A law providing for cumulative offenses is *ex post facto* if enforced for antecedent offenses. *Baker v. St.*, 11 Cr. App., 262; *ex parte Hunt*, 28 Cr. App., 361; *Hannahan v. St.*, 7 Cr. App., 664.

SEC. 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the legislature, or created under its authority, shall be subject to the control thereof.



The opening of a second-class road from a third-class road comes within the meaning of this section and compensation must be made. *Bounds v. Kirven*, 63 T., 159; *Woolridge v. Eastland Co.*, 70 T., 680; 8 S. W. R., 503; *Bradley v. St.*, 22 Cr. App., 330.

A railway company cannot cross land which it does not own, without paying for the same or securing it by a deposit of money. *Ry. Co. v. Donahoo*, 59 T., 128.

An act providing that cities desiring to appropriate lands for streets may appoint appraisers, and which act gives no right of appeal, is unconstitutional. *Rhine v. McKinney*, 53 T., 354.

The legislature cannot confer a special privilege on an irrigation company without providing for the payment of just compensation to the riparian proprietors. *Irrigation Co. v. Vivian*, 74 T., 170.

This section does not apply to police regulations, necessary to meet impending danger. *Keller v. Corpus Christi*, 50 T., 614.

One who voluntarily consents to the occupation of his land by a Ry. Co. for 17 years, can not recover damages. *Ry. Co. v. Sutor*, 59 T., 31.

The word "damages" means some injury peculiar to the particular property, and not suffered by it as a result of the construction of public work in common with other property in the same community. *Ry. Co. v. Fuller*, 63 T., 467; *Bounds v. Kirven*, 63 T., 159; *Ry. Co. v. Eddins*, 60 T., 657; *Ry. Co. v. Gouldberg*, 68 T., 686, 5 S. W. R., 825.

This section only has reference to the exercise of public domain. *Norris v. City of Waco*, 57 T., 635.

Assessments, for public improvements, on abutting property, in excess of the benefits derived, violates this section. *Hutcheson v. Storrie*, 51 S. W. R., 848.

Condemnation proceedings to open a road, where the property is taken without compensation, violates this section. *G. H. and S. A. Ry. Co. v. Baudt*, 45 S. W. R., 939.

The exception made where property is taxed for

the use of the state, includes condemnations for public roads by the commissions court. *Travis county v. Trogden*, 88 T., 302, 31 S. W. R., 358.

"Adequate compensation" means value of land taken and damages to remaining land. *Id. Dulaney v. Nolan county*, 85 T., 225.

Law authorizing the appropriation of all the waters of all natural streams in the arid districts of the state, for the purpose of irrigation, to the exclusion of the use thereof by other riparian owners for any but domestic purposes, without providing compensation, is unconstitutional. *Barrett v. Metcalf*, 33 S. W. R., 758, 12 C. A., 247.

Owner of land through which a public road is surveyed is entitled to an injunction against the opening of the road until adequate compensation be made. *Hopkins v. Cravey*, 85 T., 189, 19 S. W. R., 1067.

Change of road from a second to a first-class road entitles the owner to compensation for additional land taken. *Llano Co. v. Scott*, 21 S. W. R., 177, 2 C. A., 408; *Parker county v. Jackson*, 23 S. W. R., 924, 5 C. A., 36.

Damages done to an easement in a public street is recoverable. 1 App. C. C., Sec. 580.

City of Dallas had no authority to grade McKinney avenue and to cause injury to person's property not common to others property, without compensation. 2 App. C. C., 663.

The word "taken" in this section, means a final transfer of title to property, or its permanent subjection to an easement. *G. C. and S. F. Ry. Co. v. Lyons*, 2 App. C. C., Sec. 139.

This section has reference to the taking of private property for public use, under the right of eminent domain. *Norris v. City of Waco*, 57 T., 643; *Keller v. Corpus Christi*, 50 T., 627.

A mortgage is property within the meaning of this section prohibiting the taking of private property for public use without compensation. *Aggs v. Shackelford County*, 85 T., 149; *G. C. and S. F. v. Fuller*, 63 T., 469.

"Damage" means loss or diminution of what is a man's own, occasioned by the fault of another. *Aggs v. Shackelford County*, 85 T., 149, 19 S. W. R., 1083.

Where water is taken under power to condemn land for irrigation purposes, it must be paid for. *Irrigation Co. v. Hudson*, 85 T., 592, 22 S. W. R., 398.

Under this section a land owner whose property is injured by the construction of a railway and running trains thereon, is entitled to damages, although the railroad is not upon his land. *Ry. Co. v. Hall*, 78 T., 169.

Under this section an action will lie for damages done to property, although there has been no actual taking for public use. *Cooper v. City of Dallas*, 83 T., 242, 18 S. W. R., 565; *Hamilton county v. Garrett*, 62 T., 606.

The taking of land for public use is not in the nature of a conveyance, but is the exercise of the superior title of the government. *City of San Antonio v. Grandjean*, 91 T., 432, 41 S. W. R., 477, 44 S. W. R., 476.

The word "damaged" includes not only property actually taken for public use, but also that which has been damaged by such use, although it is not taken. *Williams v. Ry. Co.*, 1 App. C. C., Sec. 312.

A street railway is not a new burden on the street. 2 App. C. C., Sec. 825.

"Property" not only means tangible property but every right and incident accompanying the ownership. *G. C. and S. F. v. Fuller*, 63 T., 467.

Damage to property by railroad gives owner damages, as if the property had been destroyed. *G. C. and S. F. v. Eddins*, 60 T., 656.

The owner of property can recover damages for the use or taking of adjoining land. In this respect this constitution gives more protection to property than did the former constitutions. *Belt Line Street Ry. Co. v. Crabtree*, 2 App. C. C., Sec. 662; *G. C. and S. F. v. Graves*, 1 App. C. C., Sec. 579.

Compensation must be made in money and not in

real or imaginary benefit. *Ry. Co. v. Ferris*, 26 T., 588; *City of Paris v. Mason*, 37 T., 447.

Uncertain provisions for payment are not sufficient. *Id.*

There can be no taking until compensation has been paid or tendered. *Ry. Co. v. Ruby*, 80 T., 176; 2 App. C. C., Sec. 139.

The law providing that a person who builds or maintains a fence of more than three miles in the same general direction, without providing for a gate, is guilty of a misdemeanor, violates this section. *Dilworth v. St.*, 36 Cr. App., 189.

The state has a right to revoke a license for which an antecedent tax has been paid. *Rouland v. St.*, 12 Cr. App., 418; *ex parte Kennedy*, 23 Cr. App., 77; *ex parte Lynn*, 19 Cr. App., 293.

The clause "no irrevocable or uncontrollable grant of special privileges or immunities shall be made, but all privileges and franchises granted by the legislature or created under its authority shall be subject to its control thereof," means to prohibit the legislature from granting any special privilege or immunity in such a way as it could not subsequently be annulled or forfeited for causes defined by law or condemned in the exercise of public domain. And all privileges, franchises granted by the legislature at all times shall remain subject to legislative control. *Mayor of Houston v. Houston Ry. Co.*, 83 T., 549, 19 S. W. R., 786.

SEC. 18. No person shall ever be imprisoned for debt.

Under the old constitution fines were held not to be debts and imprisonment for their collection were held to be constitutional. *Luckey v. St.*, 14 T., 400; *Smedley v. State*, 30 T., 223.

A fine for contempt is not a "debt" within the

meaning of this section, and a person can be imprisoned for the same. *Ex parte Robertson*, 27 Cr. App., 628; 11 S. W. R., 669.

SEC. 19. No citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Act of 1887 requiring railroad companies to make crossings, within inclosures of private individuals, is unconstitutional, in so far as it refers to companies who have by condemnation proceedings, or otherwise, purchased the right of way and fenced their tracts. *S. and A. Pass v. Bell*, 32 S. W. R., 374; *Ry. Co. v. Ellis*, 70 T., 310, 7 S. W. R., 722.

A city ordinance, providing for impounding of animals running at large, and sale after reasonable notice, and providing for releases on reasonable fees, and that the owner may recover the proceeds of sale by applying to the city, is constitutional. *Paris v. Hale*, 35 S. W. R., 333.

To be due process of law, there must be a tribunal to appeal to. *Runge v. Wyatt*, 25 T., 292.

The legislature can not empower a municipality to assess cost of improvement on abutting property in excess of benefits derived from the property. *Hutcherson v. Storrie*, 92 T., 685, 51 S. W. R., 848. (*Adams v. Fisher*, 75 T., 657, overruled).

Taking property under taxing power is due process of law. *Werner v. City of Galveston*, 72 T., 22, 7 S. W. R., 326; *Davidson v. New Orleans*, 96 U. S., 97.

The enforcement of the school tax, regularly imposed, does not deprive one of his property without due process of law. *Werner v. City of Galveston*, 72 T., 22, 7 S. W. R., 726.

By the law of the land is meant the general law,



which hears before it condemns, proceeds upon inquiry, and only renders judgment after trial. *Armstrong v. Traylor*, 87 T., 598, 30 S. W. R., 440.

The hog law disposes of ones property without due process of law, as it provides for no trial, no right of appeal, and the owners rights have no protection. *Id.*

The law providing for the opening of public roads, does not take ones property without process of law. *Vogt v. Bexar county*, 42 S. W. R., 127. (*Rhine v. City of McKinney*, 53 T., 354; *Ry. Co. v. Ellis*, 70 T., 310, 7 S. W. R., 722; *Armstrong v. Traylor*, 87 T., 598, 30 S. W. R., 440; distinguished).

Art. 39 of the laws of 1892 providing that defective appeal or error bonds may be amended by filing new ones as the court may prescribe, in referring to cases, to be transferred from the Supreme Court to the court of Civil Appeals, is not giving jurisdiction to the court of civil appeals, without due process of law. *First Nat. Bank of Decatur v. Preston Nat. Bank*, 85 T., 560, 22 S. W. R., 579.

An ordinance forbidding further burial of the dead in the grounds of a cemetery association does not deprive the association of its property rights without due process of law. *City of Austin v. Austin Cemetery Co.*, 87 T., 330, 28 S. W. R., 528.

R. S., Arts. 4604-4607, providing that owners of enclosed premises may impound stock unlawfully trespassing thereon, and have damages assessed by three free holders, and sell stock to pay the damages, deprives one of his property without due process of law. *Armstrong v. Taylor*, 87 T., 598, 30 S. W. R., 440.

Law providing that when receiver is discharged and property restored to the owner without sale, the owner shall be liable for unpaid liabilities of the receiver, does not deprive the owner of his property without due process of law. *M. K. & T. Ry. Co. v. Chilton*, 27 S. W. R., 272.

When parties enter into a voluntary association and adopt rules, they cannot look to this section to

nullify their compact. *Manning v. San Antonio Club*, 63 T., 166.

Act of 1879 authorizing collector of taxes to collect \$25 a section for each section of public school land closed, from the person enclosing or controlling it, violates this section. *McFadden v. Lougham*, 58 T., 579.

Depriving one of selling liquors because he fails to place his license in a conspicuous place is constitutional. *Bell v. St.*, 28 Cr. App., 96, *Stelle v. St.*, 19 Cr. App., 425.

Dogs are property, and a city ordinance declaring that policemen shall kill all unmuzzled dogs, violates this section. *Lynn v. St.*, 33 Cr. App., 153, 25 S. W. R., 779.

An act providing that if the defendant escapes his appeal shall be dismissed, is constitutional. *Brown v. St.*, 5 Cr. App., 126, *Gresham v. St.*, 1 Cr. App., 458, *Young v. St.*, 3 Cr. App., 384, *Loyd v. St.*, 19 Cr. App., 137.

The forgery in other states of land titles in this state constitutes an offense against the state, and the guilty person can be tried and convicted in this state. *Hanks v. St.*, 13 Cr. App., 289.

The legislature has power to provide for the trial of an offense in a county other than the one in which the crime was committed. *Ham v. St.*, 4 Cr. App., 645, *Frances v. St.*, 7 Cr. App., 501.

A law providing that it shall be a penal offense for any person, other than the agent of the railroad company, to sell its tickets, does not deprive one of his property without due process of law. *Jannin v. St.*, 51 S. W. R., 1126.

Due course of law requires every time a person is committed for contempt, proper order of court must be entered and commitment issued. *Ex parte Kerby*, 35 Cr. App., 634, *Ex parte Hawkins*, 35 Cr. App., 531.

In order for a person to be tried by due process of law, the indictment must be found by a legally organized grand jury and must contain all the necessary

elements of the offense. *Caling v. St.*, 25 T., 738; *Huntsman v. St.*, 12 Cr. App., 619; *Pitner v. St.*, 23 Cr. App., 366; *Hewitt v. St.*, 25 T., 722; *Treadwell v. St.*, 16 Cr. App., 643; *St. v. Willburn*, 25 T., 738; *St. v. Duke*, 455; *Reed v. St.*, 14 Cr. App., 662; *Young v. St.*, 12 Cr. App., 614; *Flores v. St.*, 13 Cr. App., 337; *Williams v. St.*, 12 Cr. App., 395; *Insall v. St.*, 14 Cr. App., 145; *Brown v. St.*, 13 Cr. App., 347; *Gabriesky v. St.*, 13 Cr. App., 428.

Sec. 20. No citizen shall be outlawed; nor shall any person be transported out of the state for any offense committed within the same.

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate; and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

The estate of one imprisoned for life does not descend or vest as in the case of death. *Davis v. Lanning*, 85 T., 39; 19 S. W. R., 846.

An act providing for the forfeiture of a pistol in case of conviction is unconstitutional. *Jennings v. St.*, 5 Cr. App., 299.

SEC. 22. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.



SEC. 23. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the state; but the legislature shall have power by law to regulate the wearing of arms with a view to prevent crime.

The right to keep arms in self defense affords no defense against an indictment for carrying prohibited weapons. *Ex parte Rothchild*, 2 Cr. App., 567. \*

This right will not serve as a defense for unlawfully carrying concealed weapons. *Lewis v. St.*, 7 Cr. App., 567.

SEC. 24. The military shall at all times be subordinate to the civil authority.

SEC. 25. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war, but in a manner prescribed by law.

SEC. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this state.

A contract granting an exclusive right of way to lay piping, to supply a town with water, violates this section. *Edwards county v. Jennings*, 89 T., 618, 35 S. W. R., 1053.

In this state no city can grant an exclusive right

and the fact that the City of Austin had contracted with another water and light company is no ground for an injunction, preventing it from making another contract with another water and light company. *Nalle v. City of Austin*, 85 T., 520, 22 S. W. R., 668.

A privilege or franchise given by a city street railway company is not a monopoly, as it does not interfere with the powers of the city authorities over the streets, nor prevent a like grant to others. *Mayor of Houston v. Houston Ry. Co.*, 83 T., 548, 19 S. W. R., 127.

A grant which gives to person or persons an exclusive right to pursue a designated employment, or to make, sell, buy a designated commodity, creates a monopoly. *Brenham v. Water Co.*, 67 T., 561, 4 S. W. R., 143.

A monopoly exists if the privilege be exclusive for a period of time. It need not continue indefinitely so as to amount to a perpetuity. And it exists if it operates to the hurt of a community. *Id.*

A contract between the City of Brenham and a water company by which the water company was to have the exclusive right for the period of 25 years, was held to be a monopoly. *Id.*

The elements of a monopoly are exclusive right, or privilege, conferred upon a person or association of persons, by which they possess the sole authority to pursue that business. *McDonnell v. I and G. N.*, 60 T., 591.

The word "monopoly" is derived from two Greek words, "*Monos*," meaning alone, and "*Polio*," meaning to deal. And is the sole power of making, dealing in, or being otherwise interested in, any thing. *City of Brenham v. Becker*, 1 App. C. C., Secs. 1243-4.

See where a contract with a meat market was held to create a monopoly. *Brenham v. Beckler*, 1. App. C. C., Secs. 1243-4.

See where a contract between the City of San Antonio and a water works company was held to create a

monopoly. *Altgelt v. City of San Antonio*, 81 T., 437.

Law making it a penal offense for any person other than the railway company's agent to sell its tickets, does not create a monopoly. *Jannin v. St.*, 51 S. W. R., 1126.

SEC. 27. The citizens shall have the right, in a peaceful manner, to assemble together for their common good, and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance.

SEC. 28. No power of suspending laws in this state shall be exercised except by the legislature.

The City of Waco cannot, by its charter, suspend an article, imposing a penalty for keeping houses of prostitution. *Burton v. Dupree*, 46 S. W. R., 272.

SEC. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Whether statutes have any binding force is for the state court and not the U. S. court to determine. *Duncan v. McCall*, 139 U. S., 219, 35 Book, 449.

An act violative of the constitution is void. *Wil-*

liams v. Taylor, 83 T., 667, 19 S. W. R., 156; Higgins v. Rinker, 47 T., 381.

The constitution is self-executing to the extent that everything in violation of it is void. Hemphill v. Watson, 60 T., 679; Watson v. Aiken, 55 T., 536.

A law will not be declared unconstitutional unless it is clearly so, and in case of doubt it will be declared valid. Barker v. Torrey, 69 T., 7.

The rule that provisions later on should govern should only be resorted to in the last resort. G. C. and S. F. v. Rambolt, 67 T., 654.

In construing the constitution, the whole must be looked to. Jones v. Jones, 1 App. C. C., Sec. 201.

Laws are presumed to be in accordance with the constitution. Stone v. Stumper, 1 App. C. C., 324.

If the constitutional and unconstitutional parts of a law are separate and distinct, the constitutional part will remain in force and the unconstitutional part will be stricken out. W. U. T. Co. v. The State, 62 T., 634; Holly v. St., 16 Cr. App., 506; ex parte Kennedy, 23 Cr. App., 77.

But if the parts are so dependent upon one another that it cannot be presumed that the legislature would have passed any part without intending that all should have been in force and one part is constitutional, the entire statute is void. Id.

An act will be held valid unless the constitution, in express terms or by necessary implication, forbids it. Harris Co. v. Stewart, 91 T., 143, 41 S. W. R., 650; Whitemore v. Belknap, 89 T., 273, 34 S. W. R., 594; Lytle v. Half Bros., 75 T., 132, 12 S. W. R., 610.

Courts have no right to declare an act void because it is against the spirit of the constitution. Id.

Power not expressly denied to the legislature ought not to be denied by implication, unless its exercise would obstruct the exercise of power already expressly granted. Smisson v. St., 71 T., 222, 9 S. W. R., 112.

The legislature may exercise any power, not denied it by the constitution of the state, which is not

delegated to the U. S. constitution. *Day Co. v. St.*, 68 T., 527, 4 S. W. R., 865.

An act will not be declared unconstitutional unless it is clearly contrary to some provision of the constitution. *Ry. Com. v. H. and T. C. Ry. Co.*, 90 T., 349, 38 S. W. R., 750; *Orr v. Rhine*, 45 T., 354; *Barker v. Torrey*, 69 T., 12; *Sheppard v. St.*, 1 Cr. App., 304; *Baldwin v. St.*, 4 Cr. App., 591.

Where a statute admits of two constructions, one which renders it unconstitutional, and one constitutional, the latter construction should be given it. *Mad-den v. Hardy*, 92 T., 613, 50 S. W. R., 926, *Ry. Co. v. Gross*, 47 T., 428.

Constitutions operate prospectively, unless it is clearly shown, by the object in view, its words or the character of the provision, to indicate otherwise. *Ins. Co. v. Ray*, 50 T., 511; *Orr v. Rhine*, 45 T., 345.

While the rule is that a constitution operates prospectively, it will be given a retrospective operation if it was clearly the purpose of the framers and no vested right is disturbed. *Grisby v. Peak*, 57 T., 142.

A constitution takes effect from the day it is voted on. *Grisby v. Peak*, 68 T., 235.

When the legislature enacts a law, it is encumbered on it to determine the question of its power, measured by the constitutional provisions. *Wright v. Adams*, 45 T., 134; *Gunter v. Texas Land and Mortgage Co.*, 82 T., 503; *Ry. Com. v. H. and T. C.*, 90 T., 340, 38 S. W. R., 750.

Where the constitution commands the legislature to pass laws on a given subject it does not mean to prohibit laws upon other subjects. *S. and A. T. Ry. Co. v. St.*, 79 T., 265, 14 S. W. R., 1063.

Legislative intent is of great weight, but is not binding. *St. v. Moore*, 57 T., 307.

If the purpose of the statute is to accomplish a single act, or object only, and some of the provisions are void, the whole will fail, unless there is sufficient left to effect the object without the invalid portion. *Ex parte Towles*, 48 T., 413.

Laws relating to the same subject, enacted during the same session of the legislature, will be construed together and taken as one act. *Taylor v. St.*, 3 Cr. App., 169; *Austin v. G. C. and S. F. Ry. Co.*, 45 T., 234; *Laughter v. Seela*, 59 T., 177; *Loveet v. Casey*, 17 T., 594; *Scoby v. Sweat*, 28 T., 713; *Cameron v. Vaughan*, 12 T., 399; *Neele v. Keese*, 5 T., 33.

The fact that two acts, passed at the same legislature, are different in the respect that one's excepting clause is broader than the other, does not prevent them from being considered as one. *Austin v. G. C. and S. F. Ry. Co.*, 45 T., 234.

Legislative intent is to be ascertained. *Walker v. St.*, 7 Cr. App., 245; *McIntery v. City of Galveston*, 58 T., 334; *Russell v. Farquarhor*, 55 T., 359.

In construing a section of the constitution, courts will look to former constitutions to ascertain its meaning. *Milam county v. Bateman*, 54 T., 153.

The proceedings of the constitutional convention may be referred to in order to ascertain the meaning of obscure passages in the constitution. *Smission v. St.*, 71 T., 222.

Where there is nothing in the constitution prohibiting the legislature from making a grant of land, the power exists to ratify a former act of the legislature, which attempted to make a grant, prohibited by the constitution then in force. *Blum v. Looney*, 69 T., 1, 4 S. W. R., 857.

An ordinance appended to a constitution, and adopted by the convention, that made the constitution, is as binding as if incorporated in it. *Grisby v. Peak*, 57 T., 145; *Stewart v. Crosby*, 15 T., 548.

There is nothing in this constitution prohibiting the legislature from amending a bill which has been sent to the governor within those ten days allowed him for its consideration and before he has taken action upon it. *McKenzie v. Land Office*, 32 S. W. R., 1038.

A person claiming an act unconstitutional must



point out the particular provision or provisions which have been violated. *Id.*

Constitutional provisions are mandatory and not directory. *Holley v. St.*, 14 Cr. App., 505; *Hunt v. St.*, 22 Cr. App., 369; *Cox v. St.*, 8 Cr. App., 254; *St. v. Sims*, 43 T., 521; *St. v. Durst*, 7 T., 174.

The legislature has power, except where the constitution limits it. *Baldwin v. St.*, 21 Cr. App., 591.

In determining the constitutionality of an act the rule is to see if it is prohibited by the constitution. *Logan v. St.*, 4 Cr. App., 306.

Where there is any doubt of the constitutionality of a law the decision will be given in favor of the law. *Lastro v. St.*, 3 Cr. App., 363; *Cordova v. St.*, 6 Cr. App., 207; *Holley v. St.*, 14 Cr. App., 505; *ex parte Mabry*, 5 Cr. App., 93.

Nothing but a clear violation of the constitution, or usurpation of the prohibited powers, will justify a court in declaring an act unconstitutional. *Baldwin v. St.*, 21 Cr. App., 591; *Adams v. Fisher*, 63 T., 651.

A law is not unconstitutional because it contravenes public policy. *Albrecht v. St.*, 8 Cr. App., 216.

In determining whether an exercise of the police power by the state legislature is warranted by the constitution, the rule is to look to the restrictions and limitations imposed on the legislature by the constitution and not to the express grants of legislative power. *Logan v. St.*, 5 Cr. App., 307.

The legislature, unless expressly authorized, can not withdraw power from the hands in which the constitution has placed it; such power cannot be implied. *St. v. Moore*, 57 T., 307.

Where a constitutional provision, previous to its adoption, has received a construction, it will be presumed that such a construction was meant when it was adopted. *Powell v. St.*, 17 Cr. App., 326; *Black v. St.*, 1 Cr. App., 382; *Huntsman v. St.*, 12 Cr. App., 620; *Trigg v. St.*, 49 T., 645; *Hewitt v. St.*, 25 T., 725.

Contemporaneous legislative construction is con-



sidered in construing a constitutional provision. *Coombs v. St.*, 38 Cr. App., 648.

The constitution must be so construed so as to make every clause, word, etc., significant. *Cordova v. St.*, 6 Cr. App., 207.

The whole instrument must be given effect and each section receive such a construction as will permit them to stand. *Lastro v. St.*, 3 Cr. App., 363.

For a discussion of the difference of state and U. S. constitutions see *ex parte Brown*, 38 Cr. App., 295; *Holley v. St.*, 14 Cr. App., 505.

Inability of a state to comply with a constitution does not justify its violation. *Cline v. St.*, 36 Cr. App., 320; *ex parte Coombs*, 38 Cr. App., 648.

The constitution is not to receive a technical construction, but the intent of the people in adopting it must be ascertained. *Ex parte Coombs*, 38 Cr. App., 648; *Holley v. St.*, 14 Cr. App., 505; *Hunt v. St.*, 7 Cr. App., 213; *Cordova v. St.*, 6 Cr. App., 207.

In determining whether an act violates a state constitution the enquiry to be made is to the limitations imposed upon the legislature by the constitution. *Ex parte Mabry*, 4 Cr. App., 93.

Laws must be construed to harmonize with the constitution if it can reasonably be done. *Ex parte Murphy*, 27 Cr. App., 492.

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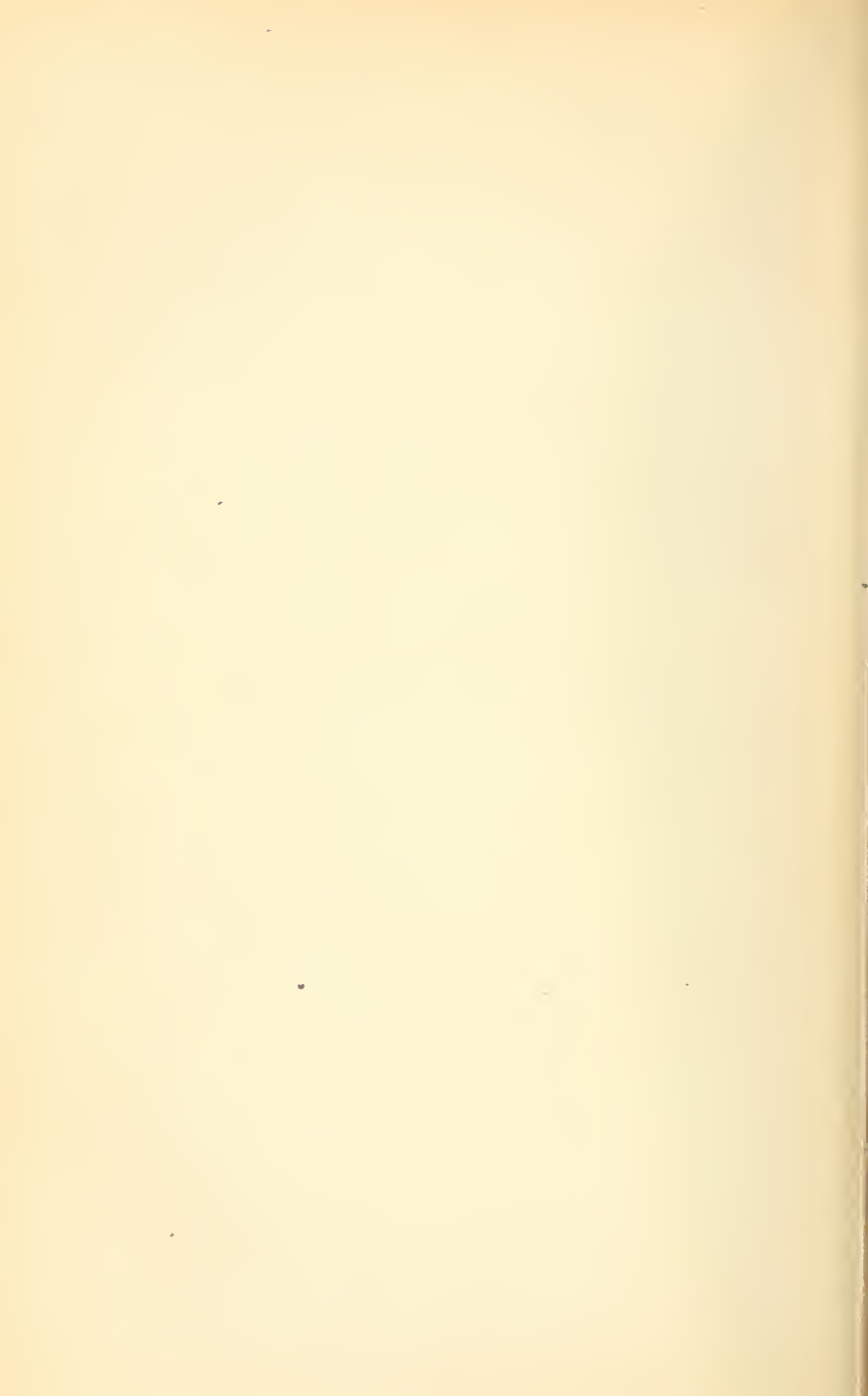
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ARTICLE II.

THE POWERS OF GOVERNMENT.

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## ARTICLE II.

## THE POWERS OF GOVERNMENT.

SECTION 1. The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

This section places the executive department beyond the control of the judiciary. *Kaufman County v. McGaughey*, 21 S. W. R., 261.

When the executive department exercises power not attached to its department and from which exercise harm will result, the judiciary will restrain. *Id.*

This section prohibits the courts from putting in a law something that has been omitted which the court believes ought to be embraced. *Chase v. Swayne*, 88 T., 225, 30 S. W. R., 1049.

The good or bad policy of a law are legislative questions over which courts have no jurisdiction. *Ins. Co. v. Chowing*, 86 T., 654, 26 S. W. R., 982.

Courts have no power to reverse or amend a statute

passed by the legislature. *Williams v. Taylor*, 83 T., 673, 19 S. W. R., 156.

A decision of one department is binding on the other when that discretion has been placed in that branch of government. *March v. St.*, 44 T., 64.

There can be no implied exemption from taxation in favor of lawyers on the ground that they are part of the judiciary and cannot be controlled by the legislature. *Ex parte Williams*, 31 Cr. App., 262, 20 S. W. R., 580.

Where a particular question is addressed to the discretion of one department an interference of any other department with the view to substitute its discretion and judgment will not be permitted by this section. *Martin v. St.*, 21 Cr. App., 2.

A court cannot decide whether or not the granting of a pardon is against public policy. *Id.*

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ARTICLE III.

LEGISLATIVE DEPARTMENT.

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## ARTICLE III.

## LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a senate and house of representatives, which together shall be styled "The Legislature of the State of Texas."

Act of 1883, authorizing the commissioners court to order an election, for one or more public weighers, if it deems necessary, is not a delegation of legislative power as to whether such office shall exist. The commissioners court had the right to put the law in force. The law having been made by the legislature. *Johnson v. Martin*, 75 T., 33, 12 S. W. R., 321.

While the legislature can not delegate its power to make laws by submitting the question of its enactment to popular vote; it can confer a power on a municipality and authorize its adoption or rejection by the voters of the municipalities. *Id.*

Act of the legislature giving commissioners court power to create the office of county superintendant, is not a delegation of legislative powers. *Stamfield v. St.*, 83 T., 320, 18 S. W. R., 577.

The legislature and not the commissioners court made the law giving the commissioners court power to create the office. The court created the office in pursuance of the law. But because it exercised power under the law, it can not be said that it made the law. *Id.*

Act authorizing cities and towns to take control of the public schools is not a delegation of legislative

power. *Werner v. City of Galveston*, 67 T., 62, 2 S. W. R., 742.

It would not be a delegation of legislative powers for the legislature to declare that a certain territory should not be annexed to a municipality, unless a majority of the persons in that municipality should assent. *Graham v. City of Greenville*, 62 T., 61, 2 S. W. R., 742.

Statute providing that the county treasurers commission shall be fixed by the commissioners court is not a delegation of legislative power. *Staples v. Llano county*, 23 S. W. R., 569.

The power of the legislature to grant, alter, amend or recall a charter can not be transferred to any local community. *Blessing v. City of Galveston*, 42 T., 641.

Legislature powers can not be transferred to the executive department. *Willis v. Owens*, 43 T., 43.

Laws in this state can only be made by the legislature, and it has no power to delegate to any board or other department of the government the power to annul laws enacted by it. *Chancey v. St.*, 84 T., 529.

SEC. 2. The senate shall consist of thirty-one members, and shall never be increased above this number. The house of representatives shall consist of ninety-three members until the first apportionment after the adoption of this constitution, when, or at any apportionment thereafter, the number of representatives may be increased by the legislature, upon the ratio of not more than one representative for every fifteen thousand inhabitants; *provided*, the number of representatives shall never exceed one hundred and fifty.

SEC. 3. The senators shall be chosen by the qual-

ified electors for the term of four years; but a new senate shall be chosen after every apportionment, and the senators elected after each apportionment shall be divided by lot into two classes. The seats of the senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one-half of the senators shall be chosen biennially thereafter.

SEC. 4. The members of the house of representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

SEC. 5. The legislature shall meet every two years, at such time as may be provided by law, and at other times when convened by the governor.

SEC. 6. No person shall be a senator unless he be a citizen of the United States, and at the time of his election a qualified elector of this state, and shall have been a resident of this state five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

SEC. 7. No person shall be a representative un-

less he be a citizen of the United States, and at the time of his election a qualified elector of this state, and shall have been a resident of this state two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

SEC. 8. Each house shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

SEC. 9. The senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members president *pro tempore*, who shall perform the duties of the lieutenant-governor in any case of absence or disability of that officer, and whenever the said office of lieutenant-governor shall be vacant. The house of representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a speaker from its own members; and each house shall choose its other officers.

SEC. 10. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attend-

ance of absent members, in such manner and under such penalties as each house may provide.

SEC. 11. Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

SEC. 12. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journals.

As to whether a court will disregard a legislative act, because the journals fail to show conformity to this section and the following sections of this article, see cases under Sec. 38 of this art.

SEC. 13. When vacancies occur in either house, the governor, or the person exercising the power of the governor, shall issue writs of election to fill such vacancies; and should the governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened shall be authorized to order an election for that purpose.

SEC. 14. Senators and representatives shall, ex-

cept in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

SEC. 15. Each house may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; *provided*, such imprisonment shall not, at any time, exceed forty-eight hours.

The house of representatives have the right to determine whether or not the act of plaintiff was an obstruction to its proceedings; and having determined that they were, they had a right to imprison the offender for contempt; and the party has no right of action against the members for voting to put him out, nor against the sargeant-at-arms for executing the order. *Canfield v. Gresham*, 82 T., 10, 17 S. W. R., 390.

SEC. 16. The sessions of each house shall be open, except in the senate when in executive session.

SEC. 17. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the legislature may be sitting.



SEC. 18. No senator or representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this state which shall have been created or the emoluments of which may have been increased during such term; no member of either house shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the legislature; and no member of either house shall vote for any other member for any office whatever, which may be filled by a vote of the legislature, except in such cases as are in this constitution provided. Nor shall any member of the legislature be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

A contract between a member of the 25th legislature and a county, giving the member the right to publish a delinquent tax list, in pursuance of a law, passed by the 24th legislature, and amended by the 25th legislature, violates this section. *Lillard v. Freestone County*, 57 S. W. R., 338.

SEC. 19. No judge of any court, secretary of state, attorney-general, clerk of any court of record, or any person holding a lucrative office under the United States, or this state, or any foreign government, shall,



during the term for which he is elected or appointed, be eligible to the legislature.

SEC. 20. No person who at any time may have been a collector of taxes, or who may have been otherwise intrusted with public money, shall be eligible to the legislature, or to any office of profit or trust under the state government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been intrusted.

See where it was not the Comptroller's duty to determine ones eligibility to an office, although there was evidence sufficient to prove that the person had not obtained a discharge for money collected by himself in a former term. *Oglesby Sureties v. St.* 73 T., 661, 11 S. W. R., 873.

SEC. 21. No member shall be questioned in any other place for words spoken in debate in either house.

Members of the house, who by their votes imprisoned a person not a member for obstructing proceedings in the house, cannot be made to respond in damages. *Canfield v. Gresham*, 82 T., 10, 17 S. W. R., 390.

SEC. 22. A member who has a personal or private interest in any measure or bill, proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

SEC. 23. If any senator or representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

SEC. 24. The members of the legislature shall receive from the public treasury such compensation for their services as may from time to time be provided by law, not exceeding five dollars per day for the first sixty days of each session; and after that not exceeding two dollars per day for the remainder of the session; except the first session held under this constitution, when they may receive not exceeding five dollars per day for the first ninety days, and after that not exceeding two dollars per day for the remainder of the session. In addition to the per diem, the members of each house shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed five dollars for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel by land, regardless of railways or water routes; and the comptroller of the state shall prepare and preserve a table of distances to each county seat now or hereafter to be established, and by such table the mileage of each member shall be paid; but no member shall be entitled to mileage for any extra ses-

sion that may be called within one day after the adjournment of a regular or called session.

SEC. 25. The state shall be divided into senatorial districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one senator, and no single county shall be entitled to more than one senator.

This section and article nine discussed together. *Lytle v. Half Bros.*, 75 T., 128, 12 S. W. R., 612.

SEC. 26. The members of the house of representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the state, as ascertained by the most recent United States census, by the number of members of which the house is composed; *provided*, that whenever a single county has sufficient population to be entitled to a representative, such county shall be formed into a separate representative district, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more representatives, such representative or representatives shall

be apportioned to such county, and for any surplus of population it may be joined in a representative district with any other contiguous county or counties.

SEC. 27. Elections for senators and representatives shall be general throughout the state, and shall be regulated by law.

SEC. 29. The legislature shall, at its first session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeably to the provisions of sections 25 and 26 of this article; and until the next decennial census, when the first apportionment shall be made by the legislature, the state shall be and it is hereby divided into senatorial and representative districts, as provided by an ordinance of the convention on that subject.

#### PROCEEDINGS.

SEC. 29. The enacting clause of all laws shall be, "Be it enacted by the legislature of the State of Texas."

Such a provision as this, in the old constitutions, was held not to refer to a resolution, order or vote. *State v. Delesdeuier*, 7 T., 44.

SEC. 30. No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.

SEC. 31. Bills may originate in either house, and when passed by such house may be amended, altered or rejected by the other.

SEC. 32. No bill shall have the force of a law until it has been read on three several days in each house, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble, or in the body of the bill), four-fifths of the house in which the bill may be pending may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

If the legislature states reasons, which in its judgment authorizes the suspension of a rule and the immediate passage of a bill, the courts have no power to examine that question. *Day Co. v. St.*, 68 T., 543, 4 S. W. R., 865.

The act of 1879, relating to public land in Greer county, passed under a suspension of rules, requiring bills to be read on three several days, did not violate this section. *Id.*

Neither the Sunday law nor the entire penal code violate this section. *Usener v. St.*, 8 Cr. App., 176.

Courts can not go behind the enrolled bill and consult the journals of the legislature in order to de-

termine whether a law was passed according to this section. *Id.*

See cases under section 38 of this article.

SEC. 33. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

A bill, the object of which was to withdraw public domain from appropriation by land certificates and set it apart for the payment of public debt and for public free schools, leaving it to future legislation, as to how it shall be disposed of, and the money be placed in the state treasury, was not a bill to raise revenue. *Day Co. v. St.*, 68 T., 545, 4 S. W. R., 865.

Act authorizing towns and villages incorporated for free school purposes to levy taxes, which bill originated in the senate, does not violate this section. *Giek. v. St.*, 31 Cr. App, 514, 21 S. W. R., 190.

The revenue contemplated by this section is such as is raised for general purposes. *Id.*

This section does not refer to laws of local or special character, determined by a vote of the community and local laws with taxes incident thereto, and taxes raised under the authority of a charter, are not revenue laws spoken of in the section. *Id.*

SEC. 34. After a bill has been considered and defeated by either house of the legislature, no bill containing the same substance shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance shall be considered at the same session.



SEC. 35. No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated), shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed.

Act of 1897 (p. 5) in so far as it regulates the compensation of officers and their fees, is not invalid by the provision, relating to the appointed of deputies, as containing more than one subject, not expressed in its title. *Clark v. Findley*, 54 S. W. R., 343.

The act of the 23rd legislature, entitled "An Act to regulate the sale of liquors," does not violate this section. *Peavy v. Goos*, 90 T. 89, 37 S. W. R., 317.

Act of 1889, entitled "An Act to Amend Art. 4238, R. S.," and in its body it contained a provision compelling railroads to keep their depots warm, etc., is constitutional. *T. & P. Ry. Co. v. Myers*, 15 S. W. R., 43.

This section has been complied with, if the title of an act gives reasonable notice of the subject matter of the statute itself. *Stone v. Brown*, 54 T., 330.

The act creating the commission of arbitration and reward is constitutional. *Id.*

An act, the object of which, as expressed in its title, is to incorporate a certain railway company can not contain a provision conferring power on other companies to consolidate with the one so created. *Morrill v. Smith*, 89 T., 529, 36 S. W. R., 56.

The title of an act "An Act to regulate condemnation of property in cities and towns for widening streets, etc.," did not include condemnation of property for stand pipes and reservoirs. *Adams v. Water Co.*, 86 T., 485.



A liberal construction will be applied in determining whether or not a statute violates this section. *Breen v. Ry. Co.*, 44 T., 306; *Giddings v. San Antonio*, 47 T., 556; *St. v. Parker*, 61 T., 267; *Morris v. St.*, 62 T., 741; (*Cannon v. Hemhill*, 7 T., 208; *Parker v. Parker*, 10 T., 86; *Robinson v. St.*, 15 T., 312; *Tadlock v. Eccles*, 20 T., 792; *St. v. Shadle*, 41 T., 405); *Rattigan v. St.*, 33 Cr. App., 301; *Tabor v. St.*, 34 Cr. App., 631.

Act of April 3rd, 1879, authorizing cities and towns to take control of their public schools, does not violate this section. *Werner v. City of Galveston*, 72 T., 22, 7 S. W. R., 726, 12 S. W. R., 159.

The word "subject" means that which is dominated or controlled by the particular law. *Day Co. v. St.*, 68 T., 527, 4 S. W. R., 865.

The word "subject" in the present constitution, is used in the same sense as the word "object" in former constitutions. *Id.*

The word "object" under the former constitutions meant "end or purpose." *Giddings v. San Antonio*, 47 T., 553; *Breen v. Ry. Co.*, 44 T., 302; *Stone v. Brown*, 54 T., 331; *St. v. McCracken*, 42 T., 384; *Ry. Co. v. Odum*, 53 T., 344; *Ry. Co. v. Smith*, 54 T., 1.

Where the part objected to can be considered as connected with or subsidiary to the main object, expressed in its title, it will be constitutional. *Giddings v. San Antonio*, 47 T., 548; *ex parte Mabry*, 5 Cr. App., 93.

The Bell Punch law did not violate this section. 1 App. C. C., Sec. 742; *Albrecht v. St.*, 8 Cr. App., 216.

Act of 1891, invalidating any provision of any contract, and limiting the time in which suit was brought, does not violate this section. *Telegraph & Telephone Co. v. Seiders*, 29 S. W. R., 258.

Where the subject of one section of an act is included in the title, such section is not void, by the fact that another section of the act conflicts with this sec-

tion of the constitution. *Campbell v. Cook*, 24 S. W. R., 977.

"An Act to define the duties, powers and qualifications and liabilities of assers of taxes and to regulate their compensation," does not violate this section. *Ry. Co. v. Smith*, 54 T., 1; *H. & T. C. Ry. Co. v. County of Presidio*, 53 T., 518.

The act of the 25th legislature, making appropriation to pay fees of district attorneys, is constitutional. *Lynden v. Finley*, 49 S. W. R., 578, 92 T., 451.

The act of the 25th legislature, taking Jones county of the 29th district and adding it to the 42nd, does not violate this section. *Fielder v. St.*, 49 S. W. R., 376.

An act of 1879, relating to the assignment of insolvent debtors for the benefit of creditors, in which was included a section, invalidating all liens on stock of goods exposed for sale, in the course of trade, does not violate this section. *Duncan v. Taylor*, 63 T., 645.

Mistakes or slight omissions, in the caption of a law, where no one has been misled or surprised, will not vitiate the law. *St. v. McCracken*, 42 T., 383.

If the body of an act specifies the means by which the object expressed in its title may be accomplished, it does not infringe a section of the constitution, requiring acts to have but one object and that object to be expressed in its title. *Hayes v. Porter*, 20 T., 793, *San Antonio*, 32 T., 412.

This section is mandatory and binding upon every department of the government. *Gunter v. Land Mortgage Co.*, 82 T., 502, 17 S. W. R., 840.

If the title in substance complies with this section the act is constitutional. But where the title does no more than furnish a reference to some other law, from which the true purpose of the bill may be discovered, this section is not complied with. *Id.*

The act to regulate public printing did not include in its caption and subject interfering with proceedings in the district court, and if such an effect was intended, it would not be within the subject of the cap-

tion. *Byrnes v. Sampson*, 74 T., 83, 11 S. W. R., 1073.

Act of April 22nd, 1879, does not violate this section. *Marsalis v. Creager*, 21 S. W. R., 545; *Ry. Co. v. Smith*, 54 T., 10; (*Stone v. Brown*, 54 T., 330, followed).

The alien land law of 1891 is unconstitutional because its subject is not expressed in its title. *Gunter v. Land & Mortgage Co.*, 82 T., 502, 17 S. W. R., 843; *St. v. Mallinson*, 82 T., 512, 17 S. W. R., 843.

This section has no application to an act validating a municipal ordinance. *Morris & Cummings v. St.*, 62 T., 729.

A law had for a caption "An Act to amend a formed act" and in its body excepted a county from the operation of the act and altered the date at which it should take effect; held that the body was not foreign to the purposes expressed in the caption. *Austin v. Ry. Co.*, 45 T., 235.

An act of the 25th legislature, entitled "An Act to create a more efficient road system for certain specified counties," does not violate this section. *Smith v. Grayson Co.*, 44 S. W. R., 921.

This section only requires the general or ultimate object to be stated in the title, and not the details by which the object is to be obtained. *Johnson v. Martin*, 75 T., 40, 12 S. W. R., 321.

The act entitled "An Act to prohibit prize fighting and pugilism and fights between men and animals and to provide penalties therefor, and to repeal all laws in conflict therewith" does not conflict with this section. *McMeans v. Finley*, 88 T., 515, 32 S. W. R., 524.

Similar provision under old constitution construed. *Cannon v. Hemphill*, 7 T., 184; *Tadlock v. Eccles*, 20 T., 782; *Robinson v. St.*, 15 T., 311; *St. v. Deitz*, 30 T., 511; *Woods v. Durett*, 28 T., 429; *ex parte House*, 36 T., 83; *St. v. Shandle*, 41 T., 404; *Davey v. Galveston*, 45 T., 291.

The generality of a title is no objection, provided it is not made to cover legislation incongruous in itself

and which cannot be considered as having a necessary or proper connection. *Floeck v. St.*, 34 Cr. App., 314.

An act creating a judicial district does not violate this section, because it omits to state the different counties constituting the newly created district, nor that one or more of the counties, composing the district, were transferred from some adjoining district. *Brown v. St.*, 32 Cr. App., 120.

This section nullifies any part of an act not expressed in the title. *Roddy v. St.*, 16 Cr. App., 502.

Where there are provisions of an act not expressed in its title it is void only to those not expressed. *Albrecht v. St.*, 8 Cr. App., 216.

An act without violating this section may contain or contemplate more objects than one. *Fahey v. St.*, 37 Cr. App., 147.

The following acts are germane to their title:

(1) The cold storage act of the twenty-fifth legislature. *Ex parte Brown*, 38 Cr. App., 295.

(2) Chapter 45, acts 1893. *Ex parte Segars*, 32 Cr. App., 554.

(3) Act of 1893, relating to the sale of spirituous liquors. *Floeck v. St.*, 34 Cr. App., 314.

(4) The Sunday laws of 1887. *Fehr v. St.*, 36 Cr. App., 93; *Nichols v. St.*, 32 Cr. App., 391, 23 S. W. R., 680; *ex parte Segars*, 32 Cr. App., 554.

(5) Act of 1876 relating to forgers of land titles. *Johnson v. St.*, 9 Cr. App., 249; *Ham v. St.*, 4 Cr. App., 645.

(6) Act of 1881 authorizing prosecutions where persons sell liquors less than a quart without license. *Fahey v. St.*, 27 Cr. App., 147.

(7) Act of April 21st, 1889. *Washington v. St.*, 28 Cr. App., 511.

(8) Act of 1876, relating to venue in criminal cases. *Cox v. St.*, 8 Cr. App., 254.

(9) Act of 1876 regulating elections. *English v. St.*, 7 Cr. App., 171.

(10) Act of 1876 with reference to keeping dogs. *Ex parte Mabry*, 5 Cr. App., 93.

An act to incorporate the city of D and grant it a new charter cannot contain a clause creating a city court. *Ex parte Fagg*, 38 Cr. App., 573.

SEC. 36. No law shall be revived or amended by reference to its title; but in such case the act revived or the section or sections amended shall be re-enacted and published at length.

This section does not apply to a law which fully declares its provisions without direct reference to any other act, though its effect is to enlarge or restrict the operation of some other statute. *Clark v. Finley*, 54 S. W. R., 343.

The title of an act amending an act should be so construed, not only as pointing out the law intended to be amended, but as stating the subject of the amendatory act in the same terms employed in the title of the act amended. *Adams v. Water Co.*, 86 T., 485, 25 S. W. R., 605.

This section does not apply to an act perfect in itself and covering the subject matter of a former act. *Johnson v. Martin*, 75 T., 34, 12 S. W. R., 321.

This section has no application to an act validating a municipal ordinance. *Morris v. Gussett*, 62 T., 729.

Where the object expressed in the title, to amend a former act, it is not necessary to state in the title the character and nature of the proposed amendment. *Austin v. G. C. & S. Fee*, 45 T., 234.

An act entitled "An Act to amend a title 32 of the R. S. by adding articles 1639a and 1639b" does not violate this section. *Womack v. Gardner*, 31 S. W. R., 358, (30 S. W. R., 589, affirmed).

An act to amend article 1639a similarly entitled is constitutional. *Id.*

The title of an act amending an act is sufficient,



if it names the article, chapter, title code to be amended, without naming the crime to which the amendment relates. *McCracken v. St.*, 42 T., 395; *Hasselmeyer v. St.*, 1 Cr. App., 690; *Nichols v. St.*, 32 Cr. App., 391, 23 S. W. R., 680.

It is not necessary to retain the numbering of the section or sections amended. *Dickerson v. St.*, 43 S. W. R., 520.

This section does not prohibit repealing statutes, by reference to their title. *Fielder v. St.*, 49 S. W. R., 376.

An act which amends the Penal Code, simply by reference to the Code, is valid. *Tabor v. St.*, 34 Cr. App., 631.

An act to amend Art. 22, title 4 of the R. S. 1895, so as to extend the term of the district court in Fort Bend county, Wharton and Waller counties, is constitutional. *Nobles v. St.*, 38 Cr. App., 330, 42 S. W. R., 978.

SEC. 37. No bill shall be considered, unless it has been first referred to a committee and reported thereon; and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the legislature.

This section does not in terms require a bill to be referred to a committee by each house before it can become a law. The requirement is, that a bill shall be referred to a committee and reported thereon. This being done, the constitution is complied with. And a bill referred to a committee of the upper house only, was constitutional. *Day Co. v. State*, 68 T., 544, 4 S. W. R., 865.

The judicial department will presume that a bill passed by the two houses, under the form of law, was referred to and reported on before its passage. *Id.*

SEC. 38. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

When a bill has been signed in the presence of the house, and has been approved by the governor, it affords conclusive evidence that the act was passed according to the constitution. *Williams v. Taylor*, 83 T., 674, 19 S. W. R., 156.

The journals of the two houses can not be looked to in order to invalidate a statute, signed by the speaker or president of the senate and approved by the governor. *Blessing v. City of Galveston*, 42 T., 642; *Ry. Co. v. Hearne*, 32 T., 547.

Courts can not go behind the statutes to invalidate a statute. *Useher v. St.*, 8 Cr. App., 177.

This section is mandatory, it imperatively requires the presiding officer to do as it says; and in order to see that it is carried out, the court can go behind the statute itself and ascertain the facts from the journals. *Hunt v. St.*, 22 Cr. App., 396.

Act of 1885, prescribing the penalty for the offense of keeping and exhibiting a gaming bank is unconstitutional, because the journals fail to show its proper signing in open session by the presiding officer. *Ford v. St.*, 23 Cr. App., 520, 5 S. W. R., 145; *Wright v. St.*, 23 Cr. App., 313, 5 S. W. R., 117.

After an act has been passed by the legislature, signed by the proper officers of each house, and signed



by the governor, filed in the office of the secretary of state and published as a law, the presumption is conclusive that the act is the same as was enacted by the legislature, and neither the journals or any other evidence can be received to prove the contrary. *Ex parte Tipton*, 23 Cr. App., 438, (13 S. W. R., 610).

SEC. 39. No law passed by the legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless, in case of an emergency, which emergency must be expressed in a preamble or in a body of the act, the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

A bill with the emergency clause, that receives 78 ayes and 8 noes in a house of 128 members, can not take effect until time fixed for bills, without such a clause. *M. K. & T. v. McGlamorg*, 89 T., 635, 41 S. W. R., 466, and 35 S. W. R., 1058.

To go into effect immediately, the bill must receive two-thirds of members elected and not two-thirds of those present. *Id.*

The words "ninety days after adjournment" means that a period of ninety days shall have elapsed after the adjournment. *Halbert v. San Saba Land and Live Stock Co.*, 89 T., 230, 34 S. W. R., 639.

An act repealing another act, not stating when it will take effect, does not take effect until 90 days after adjournment. *Austin v. G. C. & S. F.*, 45 T., 235.

The act of May 22, 1897, in reference to mandates

from the Supreme Court, did not take effect until 90 days after adjournment, because it failed to receive two-thirds vote in the lower house. *M. K. & T. v. McGlamorg*, 92 T., 151.

The published journals of the legislature are the best evidence of the passage of laws. *Ewing v. Duncan*, 81 T., 230, 16 S. W. R., 1000; *Ry. Co. v. Odum*, 53 T., 51, *St. v. Goodman*, 69 T., 55.

It is competent to examine Senate journals, as evidence of the actual vote upon the passage of the bill. *Id.*

In determining the terms of a law, the courts can not look beyond the enrolled act. *McLane v. Paschal*, 8 C. A., 120, 28 S. W. R., 710.<sup>No. 1</sup>

Act of March, 1893, reciting that the crowded condition of the district court, with increasing business of said court, etc., created a public necessity justifying the suspension of the rules. *Jameson v. St.*, 32 Cr. App., 385, 24 S. W. R., 508.

For an instance where the provision of the law operated as a postponement, notwithstanding an emergency clause, see: *Lanham v. St.*, 7 Cr. App., 126; *Graves v. St.*, 6 Cr. App., 228; *ex parte Murphy*, 27 Cr. App., 492. Act repealing act of 1892, in reference to usury. *Henron v. St.*, 31 Cr. App., 13.

SEC. 40. When the legislature shall be convened in a special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, or presented to them by the governor; and no such session shall be of longer duration than thirty days.

This section requires the subjects of legislation be presented to the legislature by the governor in writing.

No. 1. See cases under Art. 3, Sec. 38.

An act passed by the legislature, signed by the officers and approved by the governor, may be shown to have been passed in violation of this section. *Cassino v. St.*, 34 S. W. R., 769 (See cases under Art. 3, Sec. 38).

Where an act has been passed at a special session, on a subject not embraced in the governor's proclamation, his approval cannot make it valid. *Id.*

This section is mandatory, and the act of May 12, 1889, authorizing the issuance of an injunction to restrain the violation of the revenue and penal laws, is unconstitutional. *Id.*

The proclamation of the governor, "To reduce the taxes, both ad valorem and occupation, so far as it may be found consistent with the support of an efficient state government," authorizes an act levying an occupation tax upon persons who are engaged in the sale of the illustrated Police Gazette. *Baldwin v. St.*, 21 Cr. App., 591.

A proclamation of the governor, authorizing the re-appointment of the judicial districts of the entire states, by implication, authorizes all such legislation on that subject as may be deemed necessary by the legislature. *Brown v. St.*, 32 Cr. App., 119, 22 S. W. R., 596 (See cases under Art. 4, Sec. 8).

SEC. 41. In all elections by the senate and house of representatives, jointly or separately, the vote shall be given *viva voce*, except in the election of their officers.

#### REQUIREMENTS AND LIMITATIONS.

SEC. 42. The legislature shall pass such laws as may be necessary to carry into effect the provisions of this constitution.

SEC. 43. The first session of the legislature under this constitution shall provide for the revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; *provided*, that in the adoption of and giving effect to any such digest or revision, the legislature shall not be limited by sections 35 and 36 of this article.

This section in terms, applies only to revision of the body of laws, civil and criminal, and not to amendments made thereto between the periods of revision. *Gunter v. Tex. Land and Mort. Co.*, 82 T., 503.

SEC. 44. The legislature shall provide by law for the compensation of all the officers, servants, agents and public contractors not provided for in this constitution, but shall not grant extra compensation to any officer, agent, servant or public contractors, after such public service shall have been performed or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the treasury of the state to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the state, unless authorized by pre-existing law.

Where the proposed cost of a building was limited, the state was not liable for alterations directed to

be made by the commissioners having charge thereof, involving an amount exceeding the appropriation therefor. *Nichols v. St.*, 32 S. W. R., 452.

Legislature after giving permission to sue on such a claim, above mentioned, can make an appropriation for the payment of the judgment. *Id.*

The holder of a warrant, drawn by the comptroller upon the treasurer, who sells his warrant at a discount, cannot hold the state liable for the loss thereby. *The St. v. Wilson*, 71 T., 291, 9 S. W. R., 155.

The purpose of this section was to relieve the state from liability of all claims that are not authorized by pre-existing law, and to prohibit the legislature from paying them. *Id.*

The purpose of this provision is to relieve the state from liability for all claims that were not authorized by pre-existing law. *St. v. Wilson*, 71 T., 291, 9 S. W. R., 155; *Nichols v. St.*, 11 C. A., 327, 32 S. W. R., 452.

SEC. 45. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the legislature shall pass laws for that purpose.

An act of 1876, entitled "An Act to provide for the change of venue by the state in criminal cases," giving the district judges power to remove cases on their own motion, is an exercise of an authority expressly conferred by this section on the courts, the manner in which it should be exercised alone being left to the legislature. *Cox v. St.*, 8 Cr. App., 254; *Cox v. St.*, 12 Cr. App., 665.

An act providing that where the judges are disqualified that it shall not necessitate a change of venue, but the parties or their attorneys may select a special

judge, does not violate this section. *Early v. St.*, 9 Cr. App., 476.

Laws of 1893, transferring certain pending cases from the district court to the county court of Nueces county, does not violate this section. *Armstrong v. Emmett*, 41 S. W. R., 86.

This section and section 56 of this article does not prohibit a law authorizing a prosecution for an offense in some other county than the one in which it was committed. *Mischer vs. St.*, 53 S. W. R., 627.

In changing the venue on his own motion the district judge is authorized to transfer the case to any county in his own or adjoining district. *McCay v. St.*, 27 Cr. App., 415; *Frizzell v. St.*, 30 Cr. App., 42; *Boyettee v. St.*, 26 Cr. App., 689.

SEC. 46. The legislature shall, at its first session after the adoption of the constitution, enact effective vagrant laws.

SEC. 47. The legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this state, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other states.

Every scheme for the distribution of prizes by chance is a lottery. *State vs. Randle*, 41 T., 293.

That every ticket holder shall receive something does not make it less a lottery than if some drew blanks. *Randle v. St.*, 42 T., 580; *Holman v. St.*, 2 Cr. App., 610.

SEC. 48. The legislature shall not have the right



to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the state;

The erection and repairs of public buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the state, including matured bonds, for the payment of which the sinking fund is inadequate;

The support of public schools, in which shall be included colleges and universities established by the state; and the maintenance and support of the Agricultural and Mechanical College of Texas;

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the state government, and all incidental expenses connected therewith;

The support of the blind asylum, the deaf and dumb asylum, and the insane asylum, the state cemetery and the public grounds of the state;

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.



Act of 1887 providing a bounty for the destruction of wild animals, is not levying taxes outside of the economical administration of the government. *Dimmit County v. Fraizer*, 27 S. W. R., 827.

This section applies to legislature in administration of state government, but does not prohibit it from conferring on municipalities power to make local improvement, by means of assessments upon property holders. *Storrie v. Houston Ry. Co.*, 92 T., 129 (46 S. W. R., 796, affirmed).

This section does not prohibit the legislature from conferring upon cities, power to impose special taxes upon persons and property, for street improvements. *Storrie v. Woessner*, 47 S. W. R., 836. (Affirmed in 51 S. W. R., 1132). *Adams v. Fisher*, 63 T., 651; *Taylor v. Boyd*, 63 T., 533; *Transportation v. Boyd*, 67 T., 153, 2 S. W. R., 364; *Connor v. City of Paris*, 87 T., 32, 27 S. W. R., 88; *Storrie v. Coates*, 90 T., 283, 38 S. W. R., 154; *Ry. Co. v. Storrie*, 44 S. W. R., 693.

SEC. 49. No debt shall be created by or on behalf of the state, except to supply casual deficiencies of revenue, repeal invasion, suppress insurrection, defend the state in war, or pay existing debt; and the debt created to supply deficiencies in the revenue shall never exceed in the aggregate at any one time two hundred thousand dollars.

SEC. 50. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the state in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the state, in any manner what-

soever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Declared adopted December 1st, 1898.

SEC. 51. The legislature has no power to make any grant or authorize the making of any grant of public money to any individual associations or individuals, municipal or other corporations whatsoever; provided, however, the legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1st, 1880, and who are either over sixty years of age, or whose disability is the proximate result of actual service in the confederate army for a period of at least three months, their widows in indigent circumstances who have never been remarried, and who have been *bona fide* residents of the state of Texas since March 1st, 1880, and who were married to such soldiers or sailors prior to March 1st, 1866; provided that said aid shall not exceed eight dollars per month; and provided, further, that no appropriation shall ever be made for the purpose hereinbefore specified in excess of two hundred and fifty thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may

be provided by law; provided the grant of aid to said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the state; and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity.

SEC. 52. The legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the state, to lend its creditor to grant public money or thing of value, in aid of, or to any individual, association or corporation whatsoever; or to become a stockholder in such corporation, association or company.

Law providing for the payment, out of the county treasury, bounties for the destruction of wolves and other wild animals, is not the grant of public money to any individual. *Weaver v. Scurry*, 28 S. W. R., 836.

R. S. 1895, providing for the destruction of horses afflicted with glanders, and for the payment to the owner, by the county, does not violate this section. *Chambers v. Gilbert*, 42 S. W. R., 630; *Weaver v. Scurry Co.*, 28 S. W. R., 836; *Dimmit v. Fraizer*, 27 S. W. R., 829.

The legislature in a charter, granting city council power to specify what salary the recorder shall receive, is not the granting of public money to an individual. *St. v. Hanscom*, 37 S. W. R., 453.

SEC. 53. The legislature shall have no power to

grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the state, under any agreement or contract made without authority of law.

A county superintendents authority extends only to public school matters, and he has no authority to command a city to pay a teacher of a private school, as such claim is without authority of law. *Sheldon v. Martin*, 65 T., 409. .

A contractor can not recover of a county, costs of tearing down brick work, which had been damaged on a building, which he was constructing, under a contract. *Shelly Co. v. Gibson*, 44 S. W. R., 302.

SEC. 54. The legislature shall have no power to release or alienate any lien held by the state upon any railroad, or in anywise change the tenor or meaning or pass any act explanatory thereof; but the same shall be enforced in accordance with original terms upon which it was acquired.

SEC. 55. The legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation or individual

to this state, or to any county, or other municipal corporation therein.

SEC. 56. The legislature shall not, except as otherwise provided in this constitution, pass any local or special law, authorizing—

The creation, extension or impairing of liens;

Regulating the affairs of counties, cities, towns, wards or school districts;

Changing the name of persons or places;

Changing the venue in civil or criminal cases;

Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundries between this and any other state;

Vacating roads, town plats, streets or alleys;

Relating to cemeteries, graveyards, or public grounds not of the state;

Authorizing the adoption or legitimation of children;

Locating or changing county seats;

Incorporating cities, towns or villages, or changing their charter;

For the opening and conducting of election, or fixing or changing the places of voting;

Granting divorces;

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, elections or school districts;

Changing the law of descent or succession;

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before courts, justice of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effects of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;



Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or impanneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; *provided*, that nothing herein contained shall be construed to prohibit the legislature from passing special laws for the preservation of the game and fish of this state in certain localities.

An act establishing two judicial districts in Bexar county, is not void, as a local or special law, regulating the affairs of a county. *Little v. Half Bros.*, 75 T., 128, 12 S. W. R., 610.

An act authorizing the governor to appoint public weighers does not violate this section. *Johnson v. Martin*, 75 T., 33, 12 S. W. R., 322.

This section and section 1, article 5, harmonize; and the granting a court to a city is constitutional. *Ex parte Wilson*, 14 Cr. App., 593.

This section does not apply to granting special charters to cities having over 10,000 inhabitants, as article 11, section 5, authorizes such action. *Assn. v. Pierre heirs*, 31 S. W. R., 426; *Dallas v. Electric Co.*, 83 T., 243, 18 S. W. R., 552.

The exemption of a city from garnishment, passed



under article 11, section 5, does not violate this section. *Dallas v. Electric Co.*, 18 S. W. R., 553.

Laws of 1899 relating to claims against railroads, does not violate this section, on the ground that it contains a provision for attorneys fees of ten dollars, if the claim is not paid in thirty days. *G. C. & S. F. v. Ellis*, 18 S. W. R., 723.

This section does not prevent the legislature from giving a city council, in the charter, power to determine the salary of a city recorder. *St. v. Hanscom*, 37 S. W. R., 453-601.

A city charter which authorizes the city to make certificates, issued to persons making sewer improvements, bear a different rate from that prescribed by the constitution, violates this section. *Bayha v. Carter*, 26 S. W. R., 137.

Act of 1889, providing that before an appeal or writ of error will be allowed to a receiver, he shall give bond with sureties, etc., does not violate this section. *Dillingham v. Putnam*, 14 S. W. R., 303.

Act of 1897, limiting the fees and compensation of certain officers in counties of less than 3,000 voters, is not a local law within the meaning of this section. *Clark v. Finley*, 54 S. W. R., 343.

Prohibition contained in the state constitution against the exercise, by the legislature of specific powers in a particular instance, is a recognition of the existence of that power, except as its exercise is expressly restrained. *Day Co. v. St.*, 68 T., 259, 4 S. W. R., 865.

This section has no application to local assessments made by cities. *Storrie v. Woesner*, 47 S. W. R., 837, 51 S. W. R., 1132; *Assu. v. Pierre heirs*, 31 S. W. R., 426; *Dallas v. Electric Co.*, 83 T., 243, 18 S. W. R., 552.

The act of 1876, providing for the conviction of forgers of land title, is not a special or local law. *Ham v. St.*, 4 Cr. App., 645; *Johnson v. St.*, 9 Cr. App., 249; *Frances v. St.*, 7 Cr. App., 501; *Hanks v. St.*, 13 Cr. App., 289.

A retroactive effect will not be given to this section. *Bohl v. St.*, Cr. App., 683.

SEC. 57. No local or special law shall be passed, unless notice of the intention to apply therefor, shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the legislature before such act shall be passed.

This section does not prevent the legislature from passing local laws for the maintenance of public roads without local notice, required for special laws. *Smith v. Grayson Co.*, 44 S. W. R., 921.

This section only requires the substance of the contemplated law to be given in the published notice. 3 App. C. C., Sec. 146.

Act of 1876, providing for the detention and conviction of forgers of land titles, is not a local law. 4 App. C. C., Sec. 845.

A city ordinance, providing for street improvements, is not a special law, within the meaning of this section, and such ordinance is valid without notice, when none is required by the charter. *Connor v. City of Paris*, 87 T., 30, 27 S. W. R., 88.

In the absence of pleading and proof, it will be presumed that an act, repealing the charter, was passed in accordance with this section. *Thompson v. St.*, 56 S. W. R., 603.

To make a statute a public law, it is not necessary

that it applies equally to all parts of the state, *provided*, it applies equally to all persons within the territorial limits describing it. *Cordova v. St.*, 6 Cr. App., 208; *Davis v. St.*, 2 Cr. App., 430.

Act requiring five terms of the district court in Bexar county, is not a local law, requiring publication. *Graves v. St.*, 6 Cr. App., 229; *Berjona v. St.*, 6 Cr. App., 265; *Handiline v. St.*, 6 Cr. App., 347; *Cox v. St.*, 8 Cr. App., 255.

The stock law of 1876 was not a local law, because it exempted many counties. *Lastro v. St.*, 3 Cr. App., 363.

An act changing and fixing term of district court is not a local law. *Cordova v. St.*, 6 Cr. App., 207.

SEC. 58. The legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

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ARTICLE IV.

EXECUTIVE DEPARTMENT.

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## ARTICLE IV.

## EXECUTIVE DEPARTMENT.

SECTION 1. The executive department of the state shall consist of a governor, who shall be the chief executive officer of the state, a lieutenant-governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office, and attorney-general.

SEC. 2. All the above officers of the executive department (except secretary of state) shall be elected by the qualified voters of the state at the time and places of election for members of the legislature.

SEC. 3. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted, by the returning officers prescribed by law, to the seat of government, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives, as soon as the speaker shall be chosen; and the said speaker shall, during the first week of the session of the legislature, open and publish them in the pres-

ence of both houses of the legislature. The person voted for at said election having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the speaker, under sanction of the legislature, to be elected to said office. But if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by joint vote of both houses of the legislature. Contested elections for either of said offices shall be determined by both houses of the legislature in joint session.

SEC. 4. The governor shall be installed on the first Tuesday after the organization of the legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this state at least five years immediately preceding his election.

SEC. 5. He shall, at stated times, receive as compensation for his services an annual salary of four thousand dollars, and no more, and shall have the use and occupation of the governor's mansion, fixtures and furniture.



SEC. 6. During the time he holds the office of governor he shall not hold any other office, civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof, for the same; nor receive any salary, reward or compensation, or promise thereof, from any person or corporation, for any service rendered or performed during the time he is governor, or to be thereafter rendered or performed.

SEC. 7. He shall be commander-in-chief of the military forces of the state, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the state, to suppress insurrection, repel invasion, and protect the frontier from hostile incursions by Indians or other predatory bands.

SEC. 8. The governor may, on extraordinary occasions, convene the legislature at the seat of government, or at a different place in case that should be in possession of the public enemy, or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the legislature is convened.

The governor is not compelled to define with precision, the subjects of legislation, but only in

a general way by his call to confine the business to the particular subjects. *Baldwin vs. State*, 21 Cr. App., 591, 3 S. W. R., 109; *Brown vs. St.*, 32 Cr. App., 119, 22 S. W. R., 601.\*

SEC. 9. The governor shall, at the commencement of each session of the legislature, and at the close of his term of office, give to the legislature information, by message, of the condition of the state; and he shall recommend to the legislature such measures as he may deem expedient. He shall account to the legislature for all public moneys received and paid out by him from any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session he shall present estimates of the amount of money required to be raised by taxation for all purposes.

SEC. 10. He shall cause the laws to be faithfully executed; and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the state with other states and with the United States.

SEC. 11. In all criminal cases, except treason and impeachment, he shall have power, after conviction, to grant reprieves, computations of punishment, and par-

\*See cases under Art. 3, Sec. 10.

dous; and under such rules as the legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the senate, he may grant pardons in cases of treason, and to this end he may respite a sentence therefor, until the close of the succeeding of the legislature; *provided*, that in all cases remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the secretary of state his reasons therefor.

A proceeding for contempt is not a criminal case in which the governor has the pardoning power. *Taylor v. Goodrich*, 40 S. W. R., 515.

A pardon granted by the governor can not operate as a release of the payment of costs adjudged against a misdemeanor. *Ex parte Mann*, 46 S. W. R., 828.

The pardoning power can only be invoked after conviction. *Camron v. State*, 32 Cr. App., 180, 22 S. W. R., 682.

The governor can restore competency of a witness convicted of a felony, even after such person has suffered the penalty assessed against him. *Hunnicytt vs. St.*, 18 Cr. App., 499.

A full pardon granted a prisoner, after he has served his full term in the penitentiary, has the same effect as if it had been granted during the term of imprisonment. *Id.*

A pardon, if it substantially covers the offense, is not void on account of error in description. *Martin v. St.*, 21 Cr. App., 1.

Nothing short of a full pardon can restore to a felon convict his competency as a witness in the courts. *Carr v. St.*, 19 Cr. App., 635.

A pardon is conditionally, when it only becomes

operative, when the grantee has performed some specified act, or it is to become void after some specified event has occurred. It is partial when it remits a portion of the legal consequences of the crime. It is full when it unconditionally frees the party from all legal consequences. *Id.*

A pardon once granted cannot be revoked by the authority which granted it. *Rossom v. St.*, 23 Cr. App., 287.

Pardons discussed *Parks v. St.*, 29 Cr. App., 596; *Hunnicut v. St.*, 18 Cr. App., 499; *Rivers v. St.*, 10 Cr. App., 177.

This section has reference to criminal cases and not to civil. *Jeter v. St.*, 26 S. W. R., 48, 86 T., 57.

SEC. 12. All vacancies in state or district offices, except members of the legislature, shall be filled, unless otherwise provided by law, by appointment of the governor, which appointment, if made during the session, shall be with the advice and consent of two-thirds of the senate present. If made during the recess of the senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the senate, the governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the senate; but

may appoint some other person to fill the vacancy until the next session of the senate, or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

SEC. 13. During the session of the legislature the governor shall reside where the sessions are held, and at all other times at the seat of government, except when by act of the legislature he may be required or authorized to reside elsewhere.

SEC. 14. Every bill which shall have passed both houses of the legislature shall be presented to the governor for his approval. If he approve, he shall sign it; but if he disapprove it, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered; and if approved by two-thirds of the members of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and

against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevent its return; in which case it shall be a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the governor contains several items of appropriation, he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each house, the same shall be part of the law, notwithstanding the objections of the governor. If any such bill, containing several items of appropriation, not having been presented to the governor ten days (Sundays excepted) prior to adjournment, be in the hands of the governor



at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof, and make proclamation of the same, and such item or items shall not take effect.

Where the governor has transmitted objections to items in an appropriation bill to the legislature while in session, he cannot file objections to other items of the bill after the adjournment. *Pickle v. McCall*, 86 T., 212, 24 S. W. R., 265.

SEC. 15. Every order, resolution or vote, to which the concurrence of both houses of the legislature may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

SEC. 16. There shall also be a lieutenant-governor, who shall be chosen at every election for governor, by the same electors, in the same manner; continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as governor and for whom as lieutenant-governor. The lieutenant-governor shall, by virtue of his office, be president of the senate, and shall have, when in



committee of the whole, a right to debate and vote on all questions; and when the senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the governor to serve, or of his impeachment or absence from the state, the lieutenant-governor shall exercise the powers and authority appertaining to the office of governor until another be chosen at the periodical election, and be duly qualified; or until the governor impeached, absent or disabled, shall be acquitted, return or his disability be removed.

SEC. 17. If, during the vacancy in the office of governor, the lieutenant-governor should die, resign, refuse to serve, or be removed from office, or be unable to serve, or if he shall be impeached or absent from the state, the president of the senate, for the time being, shall, in like manner, administer the government until he shall be superseded by a governor or lieutenant-governor. The lieutenant-governor shall, while he acts as president of the senate, receive for his services the same compensation and mileage which shall be allowed to the members of the senate, and no more; and during the time he administers the government as governor, he shall receive in like manner the same compensation which the governor would have received had he been employed in the duties of his office, and no more. The

president, for the time being, of the senate, shall, during the time he administers the government, receive in like manner the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 18. The lieutenant-governor, or president of the senate succeeding to the office of governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this constitution on the governor.

SEC. 19. There shall be a seal of the state, which shall be kept by the secretary of state, and used by him officially under the direction of the governor. The seal of the state shall be a star of five points, encircled by olive and live oak branches, and the words "The State of Texas."

SEC. 20. All commissions shall be in the name and by the authority of the State of Texas, sealed with the state seal, signed by the governor, and attested by the secretary of state.

SEC. 21. There shall be a secretary of state, who shall be appointed by the governor, by and with the ad-

vice and consent of the senate, and who shall continue in office during the term of service of the governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the legislature or either house thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of two thousand dollars, and no more.

SEC. 22. The attorney-general shall hold his office for two years and until his successor is duly qualified. He shall represent the state in all suits and pleas in the supreme court of the state in which the state may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the state, take such actions in the court as may be proper and necessary to prevent any private corporation from exercising any power, or demanding or collecting any species of taxes, toll, freight or wharfage not authorized by law. He shall, whenever sufficient cause exist, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the governor and other executive officers, when requested by

them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; *provided*, that the fees which he may receive shall not amount to more than two thousand dollars annually.

The attorney general may maintain a suit in behalf of the state for the prevention or redress of an injury. *St. v. Trust Co.*, 81 T., 530, 17 S. W. R., 60.

The state must have some interest in the subject matter to entitle the attorney general to maintain suit. *Id.*

Where only private rights are involved he has no power. *Id.*

Attorney general's authority to bring suit will be presumed. *St. v. Thompson*, 64 T., 693.

The attorney general has no power to determine judicially for what purpose a corporation may be incorporated. *Ry. Co. v. Morris*, 67 T., 702.

The legislature had the power to make the attorney general the adviser of district and county attorneys, although the attorney general is classed in the executive department. *St. v. Moore*, 57 T., 307.

This section confers on attorney general's power to institute suits in the name of the state, to prevent private corporations from exceeding their powers, and thereby creating public nuisances. *St. v. Paris Ry. Co.*, 55 T., 80.

In construing this section with section 21 of Art. 5, held that county attorneys has not the power to represent the state in certain suits, which can only be tried in the district court, and in that respect the attorney general's power is absolute. *Id.*

Act of April 12, 1883, creating the land board, and making officers of the executive department, members, does not violate this section or Sec. 23 of this article on the ground that the duties imposed are executive. As the clause "such other duties as may be required by law" authorizes such action. *Arnold v. St.*, 71 T., 239, 9 S. W. R., 120.

The legislature can not confer on district and county attorneys' authority to institute proceeding against private corporations for exceeding their powers. *St. v. I. & G. N.*, 89 T., 563, 35 S. W. R., 1067.

The attorney general has power to restrain the establishment of fire insurance monopoly. *Queen Ins. Co. v. St.*, 86 T., 250, 22 S. W. R., 1048.

She where the duty of the attorney general to bring suit was not waived. *East Line Red River Ry. Co. v. St.*, 12 S. W. R., 690.

SEC. 23. The comptroller of public accounts, the treasurer and the commissioner of the general land office, shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of two thousand and five hundred dollars and no more; reside at the capital of the state during his continuance in office; and perform such duties as are or may be required of him by law. They and the secretary of state shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the state treasury.

SEC. 24. An account shall be kept by the officers of the executive department, and by all officers and managers of state institutions, of all moneys, and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the governor under oath. The governor may at any time require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall be required by the governor under oath, and the governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who at any time shall wilfully make a false report or give false information, shall be guilty of perjury, and so adjudged and punished accordingly, and removed from office.

Under this section providing that officers of the executive department shall keep accounts of money, received and disbursed and shall make reports, it is the duty of the secretary of state to make a report. *Madden v. Hardy*, 92 T., 613, 50 S. W. R., 926.

SEC. 25. The legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds, and providing

for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

SEC. 26. The governor, by and with the advice and consent of two-thirds of the senate, shall appoint a convenient number of notaries public for each county, who shall perform such duties as now are or may be prescribed by law.



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ARTICLE V.

JUDICIARY DEPARTMENT.

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## CHAPTER V.

## JUDICIARY DEPARTMENT.

SECS. 1, 2, 3, 4, 5, 6, 7, 8, declared adopted September 22, 1891.

SECTION 1. The judicial powers of this state shall be vested in one supreme court, in courts of civil appeal, in a court of criminal appeals, in district courts, in county courts, in commissioners' court, in courts of justices of the peace, and in such other courts as may be provided by law. The criminal district courts of Galveston and Harris counties shall continue with the district, jurisdiction and organization now existing by law, until otherwise provided by law. The legislature may establish such other courts as it may deem necessary, and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

A system of courts, marked out by the constitution, cannot be changed by the legislature, except when the power to make the change is conferred by the constitution. *Ex parte Towles*, 48 T., 414.

Under the section "In such inferior courts and magistrates as may be created in the constitution, or by the legislature under its authority" (of the constitution of 1869). It was held that the legislature had, in the absence of any restriction, the power to create

municipal tribunals. *Blessing v. City of Galveston*, 42 T., 641.

The legislature can confer jurisdiction on a recorder's court to try offenses against the penal laws of the state, and an act giving the recorder of a city jurisdiction of violations of penal code, of which justices of the peace have jurisdiction, is constitutional. *Harris county v. Stewart*, 91 T., 133, 41 S. W. R., 650; *May v. Finley*, 91 T., 354, 43 S. W. R., 257; *State v. De Gess*, 11 S. W. R., 1029.

The legislature cannot under the clause "such other courts as may be provided for by law," create a city court and change the organization of the judicial system. *Ex parte Coombs*, 38 Cr. App., 648, 44 S. W. R., 854.

The legislature can neither invest municipal courts with jurisdiction, exclusive of or concurrent with the state courts, to try violations of the penal code; nor invest said courts with power to suspend any penal law of the state, within the limits of the municipal corporation. *Id.*

See Judge Henderson's opinion in 47 S. W. R., 163.

Under the provision "such other courts as may be provided for by law" the legislature has no power to confer on a municipal corporation jurisdiction to try state offenses. *Ex parte Knox*, 39 S. W. R., 670 (Cr. App.); *Leach v. State*, 36 Cr. App., 248, 36 S. W. R., 471; *Ex parte Fagg*, 38 Cr. App., 573, 44 S. W. R., 294; *Holland v. St.*, 39 S. W. R., 675; *Camby v. City of Dallas*, 44 S. W. R., 865; *Ex parte Wickson*, 47 S. W. R., 643.

The City of Dallas cannot try an offense for keeping a disorderly house. *Leach v. St.*, 36 Cr. App., 248, 36 S. W. R., 471.

Portion of the charter of the City of Ft. Worth, attempting to confer jurisdiction on its city courts, to try an offense of the Sunday law, within its city limits, is unconstitutional. *Ex parte Ginnochio*, 30 Cr. App., 584, 18 S. W. R., 82.

The act of the twenty-sixth legislature, creating corporation courts, and vesting them with jurisdiction of state offenses, does not violate this section. *Ex parte Wilbarger*, 55 S. W. R., 968. (*Ex parte Coombs* and others distinguished).

City courts sustained. *Carey v. St.*, 28 Cr. App., 49, 13 S. W. R., 778; *Davis v. St.*, 2 Cr. App., 425.

The jurisdiction of Harris county district court discussed. *Davis v. St.*, 23 S. W. R., 892.

Under the clause, "The criminal jurisdiction of Galveston and Harris county district courts shall continue until otherwise provided for by law," an indictment presented in the court, sitting in Galveston county, was properly entitled, "In the Cr. District Court of Galveston county." *Giebel v. St.*, 12 S. W. R., 591.

The constitution created a single criminal judicial district composing the counties of Galveston and Harris, each with a separate independent jurisdiction. *Giebel v. St.*, 28 Cr. App., 151.

Where a legislative act with reference to the judiciary is doubtful, it should be given such a construction as will be consistent with the constitution and which would rather uphold rather than destroy the judiciary system. *Nobles v. St.*, 38 Cr. App., 330, 42 S. W. R., 978.

SEC. 2. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. No person shall be eligible to the office of chief justice or associate justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have at-

tained the age of thirty years, and shall have been a practicing lawyer or a judge of a court, or such lawyer and judge together, at least seven years. Said chief justice and associate justices shall be elected by the qualified voters of the state at a general election, shall hold their offices six years, or until their successors are elected and qualified, and shall each receive an annual salary of four thousand dollars, until otherwise provided by law. In case of a vacancy in the office of chief justice of the Supreme Court, the governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The judges of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution, and until their successors are elected and qualified.

SEC. 3. The Supreme Court shall have appellate jurisdiction only, except as herein specified, which shall be co-extensive with the limits of the state. Its appellate jurisdiction shall extend to questions of law arising in cases of which the courts of civil appeals have appellate jurisdiction, under such restrictions and regulations as the legislature may prescribe. Until

otherwise provided by law, the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the courts of civil appeals in which the judges of any court of civil appeals may disagree, or where the several courts of civil appeals may hold differently on the same question of law, or where a statute of the state is held void. The Supreme Court and the justices thereof shall have power to issue writs of *habeas corpus*, as may be prescribed by law, and under such regulations as may be prescribed by law the said courts and the justices thereof may issue the writs of *mandamus*, *procedendo*, *certiorari*, and such other writs as may be necessary to enforce its jurisdiction. The legislature may confer original jurisdiction on the Supreme Court to issue writs of *quo warranto* and *mandamus* in such cases as may be specified, except as against the governor of the state. The Supreme Court shall also have power, upon affidavit or otherwise, as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The Supreme Court shall sit for the transaction of business from the first Monday in October of each year until the last Saturday of June in the next year, inclusive, at the capital of the state. The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter be required by law, and he may hold



his office for four years, and shall be subject to removal by said court for good cause, entered of record on the minutes of said court, who shall receive such compensation as the legislature may provide.

The limits of the Supreme Court are defined by this section, and it has no appellate jurisdiction, except over such cases as are within the appellate jurisdiction of the court of Civil Appeals. *Schlantz v. Morris*, 89 T., 648, 35 S. W. R., 1041.

The Supreme Court cannot determine a question, presented by a certificate of dissent, from the court of Civil Appeals, in a case not brought there by appeal, but by original proceedings. *Id.*

The Supreme Court has a right to determine a certified question from the court of Civil Appeals, if they are questions arising in cases of which the court of Civil Appeals have appellate jurisdiction. *Darnell v. Lyons*, 85 T., 445; *Schlantz v. Morris*, 89 T., 648, 35 S. W. R., 1041.

While the jurisdiction, with few exceptions is appellate only it is not confined to questions appealed to the court from the Civil Appeals, but might be extended by legislature to questions arising in the Civil Appeals, on appeal from the trial court, before appeal to this court. *Id.*

A judgment of the Civil Appeals is conclusive in all cases upon the facts of the case and cannot be reversed by the Supreme Court. *Schley v. Blum*, 22 S.W. R., 667; *Ry. Co. v. Lerine*, 87 T., 437, 29 S. W. R., 466.

Laws of 1892 providing that the judgment of Civil Appeals shall be conclusive in certain cases does not conflict with this section. *Maddox v. Covington*, 87 T., 454, 29 S. W. R., 465.

Under this section the legislature had the right to prescribe the time in which the application for an appeal should be filed, and where the application was

filed one day late the Supreme Court had no jurisdiction. *Schleicher v. Runge*, 90 T., 456, 39 S. W. R., 279.

That the district court has appellate jurisdiction over a case is sufficient to confer jurisdiction upon the Supreme Court in that case. *Davidson v. Patton*, 57 T., 481.

A writ of injunction, not being a writ of process necessary to enforce the jurisdiction of the Supreme Court, it can not be issued by that court as an original writ to restrain a party during the pendency of an appeal. *Laredo v. Martin*, 52 T., 548.

The statute of 1881 vesting appellate power upon any judge of the Supreme Court is void. *Kleisber v. McManus*, 17 S. W. R., 249, 66 T., 48.

The Supreme Court can only exercise jurisdiction on appeal over proceedings which involved the determination of one of the enumerated powers of which the constitution gives jurisdiction to the District Court. *Williamson v. Lane*, 52 T., 335.

The judges of the Supreme Court have authority to issue writs of mandamus in vacation. *McKenzie v. Commissioner of Land Office*, 88 T., 669, 32 S. W. R., 1038.

R. S. 1895 providing that the Supreme Court may issue writ of mandamus to any state officer except the governor sufficiently specifies the cases in which the court may grant the writ within the meaning of this section of the constitution. *Thompson v. Baker*, 90 T., 163, 38 S. W. R., 21; *Pickle v. McCall*, 86 T., 212, 24 S. W. R., 265; *McKenzie v. Baker*, 88 T., 669, 32 S. W. R., 1038; *DePoyster v. Baker*, 89 T., 161, 34 S. W. R., 106.

This section gives the Supreme Court power to issue a writ of mandamus to the state comptroller or to the head of the executive department except the governor. *Jerrigan v. Finley*, 90 T., 205, 38 S. W. R., 24. The Supreme Court cannot issue mandamus in which the act sought to be compelled makes the deter-

mination of a doubtful question of fact. *Teat v. McGaughey*, 85 T., 478, 22 S. W. R., 302.

The jurisdiction of the Supreme Court in error extends only to questions of law. *Dillingham v. Richards*, 87 T., 247, 28 S. W. R., 272.

The question whether a verdict for personal injuries is excessive, can not be reviewed by the Supreme Court. *Id.*

The Supreme Court cannot review a decision of the court of the Civil Appeals, which was based upon question of facts. *Warren v. City of Denison*, 89 T., 557, 36 S. W. R., 404.

The Supreme Court cannot issue writs of mandamus, except where the facts are undisputed, and a commissioner's duty, based upon the advice of the attorney general, can not be controlled by a mandamus. *De Poyster v. Baker*, 89 T., 161, 34 S. W. R., 106.

If the commissioner's duty is clearly laid down by the law, and he refuses to perform it, a mandamus will lie. *Id.*

The clause "power upon affidavit or otherwise, as may be determined by the court, to ascertain such matters of facts as may be necessary to the proper exercise of its jurisdiction" applies only to questions, which arise after a final disposition of the case in the court from which the appeal is taken. *Nalle v. City of Austin*, 85 T., 520, 22 S. W. R., 668; *Chrisman v. Graham*, 51 T., 454.

The Supreme Court has no jurisdiction to inquire into the action of a county court, in determining that it has no jurisdiction of a cause. *Leevan v. Wheeler*, 66 T., 154, 18 S. W. R., 446.

The Supreme Court has power to revise an interlocutory order of a District Court, refusing to proceed with a case. *Kleiber v. McManus*, 66 T., 53, 17 S. W. R., 249.

Judges of the Supreme Court have authority to issue writs of mandamus in vacation. *Hines v. Morse*, 47 S. W. R., 516.

Where facts stated in a petition are contested by

answer of the other party, the Supreme Court has power under this section upon affidavit to determine its jurisdiction. *Simmons v. Fisher*, 46 T., 126.

This section applies where there has been final judgment in the District Court and does not attach in any particular case until the laws for the protection of the litigants are complied with or waived by the interested parties. *Grisby v. Bowles*, 79 T., 140, 15 S. W. R., 30.

The Supreme Court has no jurisdiction of an appeal from the refusal of a district judge to certify to the governor his disqualifications. *Id.*

Where the ruling of two districts of the Court of Appeals differ, the Supreme Court has jurisdiction to determine the cause in which the last ruling was made. *McDonald v. Ry. Co.*, 22 S. W. R., 939, 86 T., 1.

A question involving the disqualification of a judge of the court of civil appeals, who did not sit in the case, does not give jurisdiction to the Supreme Court. *Holt v. Maverick*, 86 T., 457, 25 S. W. R., 607.

The Supreme Court cannot review a judgment of the court of Civil Appeals, appealed to the latter court, from the county court, the last court not having had jurisdiction of the case. *Wetzel v. Simon*, 87 T., 403, 28 S. W. R., 274-942.

A writ of error will not lie from a final judgment of the court of Civil Appeals, which involves the construction of a statute, but not its validity. *Lumber Co. v. Harden*, 87 T., 639, 30 S. W. R., 898.

The Supreme Court can issue extraordinary writs only in cases in which it has acquired jurisdiction. *Churchill v. Martin*, 65 T., 367; *Wells v. Littlefield*, 62 T., 30.

Where it is necessary to allege and prove the value of a thing, the Supreme Court can hear affidavits as to its value, to determine the question of its jurisdiction. *Abstract Co. v. Bahn*, 87 T., 582, 29 S. W. R., 646.

The Supreme Court has power to hear, upon affi-

davits, facts upon which it can determine its own jurisdiction. *Simmons v. Fisher*, 46 T., 127.

SEC. 4. The court of criminal appeals shall consist of three judges, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to a decision of said court; said judges shall have the same qualifications and receive the same salaries as the judges of the Supreme Court. They shall be elected by the qualified voters of the state at a general election, and shall hold their offices for a term of six years. In case of a vacancy in the office of a judge of the court of criminal appeals, the governor shall fill such vacancy by appointment for the unexpired term. The judges of the court of appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution and laws as judges of the court of criminal appeals.

SEC. 5. The court of criminal appeals shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law. The court of criminal appeals and the judges thereof shall have the power to issue the writ of *habeas corpus*, and, under such regulations as



may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The court of criminal appeals shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The court of criminal appeals shall sit for the transaction of business from the first Monday in October to the last Saturday of June in each year, at the state capital and two other places (or the capital city) if the legislature shall hereafter so provide. The court of criminal appeals shall appoint a clerk for each place at which it may sit, and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years, unless sooner removed by the court for good cause, entered of record on the minutes of said court.

The court of Criminal Appeals has jurisdiction of an appeal from a judgment, rendered on a motion by a district attorney against a sheriff and the sureties on his bond, to require the payment to a certain county, of money collected by the sheriff, on an execution to satisfy a forfeited recognizance and paid by him to another county. *Russell v. St.*, 37 Cr. App., 503, 36 S. W. R., 1070.

A proceeding to strike the name of an attorney from the roll of attorneys for fraudulent conduct, is a criminal prosecution, and the court of criminal appeals, has jurisdiction. *Scott v. St.*, 31 Cr. App., 405, 20 S. W. R., 831.\*

The court of criminal appeals can issue the writ

\*The Supreme Court holds differently. *Scott v. St.*, 86 T., 321, 24 S. W. R., 789; (*Tunstall v. St.*, 51 T., 81, overruled).

of mandamus only for the purpose of enforcing its own jurisdiction. *Ex parte Inesida*, 34 Cr. App., 116.

It cannot issue writ of mandamus compelling district judges to try an issue of insanity after the defendant has been convicted. *Ex parte Inesida*, 34 Cr. App., 116; *Wyatt v. Barmore*, 5 C. A., 332.

It cannot decide certified questions where there has been no decision in the court below. *Ex parte Jones*, 34 Cr. App., 344.

It has no jurisdiction of a suit as to money collected, by a sheriff, upon execution, upon a final judgment on a forfeited recognizance. *Russell v. St.*, 37 Cr. App., 503.

It has no jurisdiction of an appeal from a judgment on a forfeiture of a bail bond. *Jester v. St.*, 86 T., 555.

The clause "the court shall have power, upon affidavit or otherwise, as may be necessary to determine its jurisdiction;" Discussed. *Ex parte Cole*, 14 Cr. App., 576; *Craddock v. St.*, 15 Cr. App., 641; *Vance v. St.*, 34 Cr. App., 395.

There are no constitutional restrictions regarding appeals from the city court. *Cornelious v. St.*, 37 Cr. App., 309.

SEC. 6. The legislature shall, as soon as practicable after the adoption of this amendment, divide the state into not less than two nor more than three supreme judicial districts, and thereafter into such additional districts as the increase of population and business may require, and shall establish a court of civil appeals in each of said districts, which shall consist of a chief justice and two associate justices, who shall have the qualifications as herein prescribed



for justices of the Supreme Court. Said court of civil appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the district court or county courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law; *provided*, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Each of said courts of civil appeals shall hold its sessions at a place in its district to be designated by the legislature, and at such time as may be prescribed by law. Said justice shall be elected by the qualified voters of their respective districts, at a general election, for a term of six years, and shall receive for there services the sum of three thousand five hundred dollars per annum, until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. Each court of civil appeals shall appoint a clerk, in the same manner as the clerk of the Supreme Court, which clerk shall receive such compensation as may be fixed by law. Until the organization of the courts of civil appeals and criminal appeals, as herein provided for, the jurisdiction, power, and organization and location of the Supreme Court, the court of appeals, and the commission of appeals shall continue as they were before the

adoption of this amendment. All civil cases which may be pending in the court of appeals shall, as soon as practicable after the organization of the courts of civil appeals, be certified to and the records thereof transmitted to the proper courts of civil appeals, to be decided by said courts. At the first session of the Supreme Court, the court of the criminal appeals, and such of the courts of civil appeals which may be hereafter created under this article after the first election of the judges of such courts under this amendment, the terms of office of the judges of each court shall be divided into three classes, and the justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices four years, and those who may draw class No. 3 shall hold their offices for six years from the date of their election and until their successors are elected and qualified; and thereafter each of the said judges shall hold his office for six years, as provided by this constitution.

A judgment of the court of civil appeals is conclusive in all cases upon the facts of the case and can not be revised by the Supreme Court. *Schley v. Blum*, 85 T., 551, 22 S. W. R., 667; *Agency Co. v. McClelland*, 86 T., 179, 23 S. W. R., 576.

This section providing that all the decisions of the court of Civil Appeals shall be conclusive on all questions of facts, brought before them on appeal, or writ of errors restricts the jurisdiction of the Supreme

Court to question of law, and does not give to the court of civil appeals power to set aside a verdict and substitute therefor its finding and render judgment thereon, when the evidence is conflicting. *Choate v. San Antonio and A. Pass Ry. Co.*, 91 T., 406, 44 S. W. R., 69.

Courts of civil appeals have jurisdiction on appeals, to determine matters, decided in an illegal district court. *Whitner v. Belknap*, 89 T., 273, 34 S. W. R., 594.

The effect of this amended section was to direct causes pending in the Supreme Court, to be taken to the court of Civil Appeals, and from that time on the court of Civil Appeals and not the Supreme Court had jurisdiction to try such cases. *Mex. Ry. Co. v. Mussette*, 86 T., 708, 26 S. W. R., 1075.

In determining the jurisdiction of the court of Civil Appeals, the amount of plaintiffs demand and defendants counter claim can not be added together. *Crosby v. Crosby*, 49 S. W. R., 359.

The court of Civil Appeals has jurisdiction of a forcible entry and detainer case, appealed from the justice court to district court, the jurisdiction of the county court being vested in the district court. *Emerson v. Emerson*, 35 S. W. R., 425.

The court of Civil Appeals has no power to issue a writ of mandamus requiring a county judge to try a pending cause. *Fannin County v. Hightower*, 29 S. W. R., 187.

Proceedings on a forfeited bail case is a criminal case and the court of civil appeals has no jurisdiction thereof. *Jeter v. St.*, 86 T., 555, 26 S. W. R., 49.

The court of Civil Appeals and not the court of Criminal Appeals has jurisdiction of an appeal in a proceeding to disbar an attorney. *Scott v. St.*, 86 T., 321, 24 S. W. R., 789; (*St. v. Tunstall*, 51 T., 81, overruled).\*

Where a clerk states in a record that a grand jury

\*See last citation on page 133.

was composed of eleven men only, but afterwards certifies that it was a mistake and that the jury was composed of twelve men, and his certificate is not controverted, the court can take his certificate. *Vance v. St.*, 34 Cr. App., 395.

See where a court exercising power "to hear upon affidavits, etc.," supercedes its mandates and awards a rehearing in a misdemeanor case, formerly disposed of, for want of jurisdiction. *Craddock v. St.*, 15 Cr. App., 640.

See where a court can take constable's affidavit of prisoners escape and thereby dismiss the case. *Ex parte Cole*, 14 Cr. App., 580.

SEC. 7. The state shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his election; who shall have resided in the district in which he was elected for two years next preceding his election; who shall reside in his district during his term of office; who shall hold his office for the period of four years, and shall receive for his services an annual salary of two thousand five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year, in

such manner as may be prescribed by law. The legislature shall have power by general or special laws to authorize the holding of special terms of the court or the holding of more than two terms in any county for the dispatch of business. The legislature shall also provide for the holding of district court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding. The district judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment.

The clause "regular terms of court to be held at one place in each county in the district twice a year" does not prohibit the creation of more than one judicial district in a county. *Lytle v. Half Bros.*, 75 T., 128, 12 S. W. R., 610.

The clause "to provide for the holding of more than two terms in any county in one year for the dispatch of business" shows that the former provisions was only intended as a limitation on the legislature power, to reduce the number of terms of the county. *Id.*

Neither this Sec. nor Secs. 1, 8 and 9 of this Art. prohibits the creation of two judicial districts in one county. *Id.*

District courts cannot be held at any other place than the county seat. *Whitner v. Belknap*, 89 T., 273, 34 S. W. R., 494, *Bank v. Fitzpatrick*, 88 T., 217, 30 S. W. R., 1053.

Act of the twenty-fourth legislature, establishing a district court at Texakana, is unconstitutional. *Whitner v. Belknap*, 89 T., 273, 34 S. W. R., 594.

An act changing the time of holding terms of a

district court will be postponed, until the courts have had two terms a year, as required by this section. *Prescott v. Linney*, 75 T., 615, 12 S. W. R., 1128, *Ex parte Murphy*, 27 Cr. App., 492; *Wilson v. St.*, 37 Cr. App., 373; *Ex parte Mato*, 19 Cr. App., 112, *Graves v. St.*, 6 Cr. App., 228, *Womack v. Womack*, 47 T.

Act of 1895 changing the time of holding the district court in the 46th judicial district, does not violate this section. *Willson v. St.*, 37 Cr. App., 373, 38 S. W. R., 624 (35 S. W. R., 390 reversed).

The term "general acts" as used in this section does not mean an act which will operate uniformly through the state, but a law which may be enacted in the course of general jurisdiction without the conditions and forms imposed upon local and special laws. *Cox v. St.*, 8 Cr. App., 255.

Act authorizing district judges to fix time for holding courts in newly organized counties, does not violate this section. *Ex parte Mato*, 19 Cr. App., 112.

SEC. 8. The district court shall have original jurisdiction in all criminal cases of the grade of felony; and in all suits in behalf of the state to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; all suits, complaints or



pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections; and said court and the judge thereof shall have power to issue writs of *habeas corpus*, *mandamus*, injunction and *certiorari*, and all writs necessary to enforce their jurisdiction. The district court shall have appellate jurisdiction and control in probate in matters over the county court established in each county for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates, and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law. The district court shall have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law, and shall have general jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this constitution, and such other jurisdiction, original and appellate, as may be provided by law.

This section, before it was amended, authorized district courts to issue writs of *habeas corpus* in felony

cases, but since amendment it can issue them in both criminal and civil matters. *Legate v. Legate*, 87 T., 248, 28 S. W. R., 281.

District courts have power to issue writs of *habeas corpus* at the instance of parents, to determine the right to the custody of a minor child. *Id.*

The district court has jurisdiction to enjoin a sale on execution, issued by the justice of the peace, though the amount is exclusively within the jurisdiction of the justice of the peace. *Smith v. Kitchens*, 40 S. W. R., 42; *Ry. Co. v. Blackenbeckler*, 35 S. W. R., 331; *Lazarus v. Swofford*, 39 S. W. R., 389.

This amended section authorizes district courts to enjoin the enforcement of a judgment of the justice court, whatever is its amount. *Id.*; *G. C. & S. F. v. King*, 80 T., 681, 16 S. W. R., 641; *G. C. & S. F. v. Rawlings*, 80 T., 579, 16 S. W. R., 430.

The power of the district courts to issue writs to enforce its jurisdiction gives it jurisdiction to act upon persons. *Anderson v. Kennedy*, 58 T., 616.

District courts cannot issue writs of prohibition against proceedings in a justice court. *Seele v. St.*, 1 C. A., 495, 20 S. W. R., 946. <sup>No. 1.</sup>

District courts can issue writs of injunction in all cases in which a court of chancery would have power to issue them under established rules of equity. *Anderson Co. v. Keunedy*, 58 T., 616; *Alexander v. Holt*, 59 T., 205; *Day Co. v. Chambers*, 62 T., 190; *Stein v. Freiberg*, 64 T., 271; *Red v. Johnson*, 53 T., 284; *Milikin v. City of Weatherford*, 54 T., 388.

District court has general power to issue writs of injunction, *mandamus*, *certiorari* and all other writs necessary to enforce its jurisdiction. *Day Co. v. Chambers*, 62 T., 190.

The power to issue writs of *mandamus* is not controlled by the amount in controversy. *Luckey v. Short*, 1 C. A., 5, 20 S. W. R., 723.

The district court can issue a writ of *quo warranto* to test the validity of a reorganization of a municipal corporation. *St. v. Dunsom*, 71 T., 65, 9 S. W. R., 103.

The district court and not the county court has jurisdiction to recover penalty on a liquor dealer's bond. *St. v. Stantsberger*, 16 S. W. R., 304, 4 App. C. C., Sec. 247; *State v. Laing*, 16 S. W. R., 1068; *St. v. Eggerman*, 16 S. W. R., 1067.

This section, as amended, conferring jurisdiction on district courts to try contested elections, is not self-executing because it prescribes no rule by which jurisdiction may be enforced. *Odell v. Wharton*, 87 T., 173, 27 S. W. R., 123.

This section does not limit the power of the district court to determine the right to an office by any other procedure than that laid out. *Gray v. Longman*, 92 T., 396.

This section does not deprive the district court of the right to try quo warranto proceedings, to determine the right to an office. *Gray v. St.*, 49 S. W. R., 217.

R. S., Arts. 1723, 1752, giving district courts jurisdiction to try contested elections, was unconstitutional, yet when this amendment went into effect, these articles became effective. *Cobb v. Cochran*, 26 S. W. R., 846.

The jurisdiction of the district court for the recovery of lands and the enforcement of liens thereon, confers jurisdiction over all liens created by the parties. *Hallebrand v. McMahan*, 59 T., 450.

See where the court had jurisdiction over the subject matter under the clause "For the trial of title of property." *St. v. Snyder*, 18 S. W. R., 107.

Suit to prevent the removal of platform scales, etc., in which their title is involved, is a suit for the recovery of land. *Beckham v. Burney*, 31 S. W. R., 718.

The district court and not the county court has jurisdiction to remove cloud from title. *Greenwood v. Watts*, 1 App. C. C., 116; *Graves v. Fay*, Id., 134. Or to annul or cancel deeds and other instruments evidencing title. *Bean v. Toland*, 1 App. C. C., 1022.

If in a suit to enforce lien on land, the claim for the lien fails, and the amount in controversy does not give

the district court jurisdiction, case must be dismissed. *Cameron v. Marshall*, 65 T., 7; *Snyder v. Wiley*, 59 T., 448.

There being no controversy of title, the district court cannot cancel a deed for the sale of land on the ground of fraud, when the purchase money, exclusive of interest, which is sought to be recovered, amounts to less than \$500. *Mixam v. Grove*, 59 T., 573.

To enforce lien on personal property, value of property determines jurisdiction. *Catulla v. Goggan*, 77 T., 32, 13 S. W. R., 742; *Smith v. Giles*, 65 T., 341.

For illustrations as to involved titles see: *Edwards v. Hefley*, 3 C. A., 465, 22 S. W. R., 649; *Smith v. Perkins*, 81 T., 152, 16 S. W. R., 805; *Weaver v. Nugent*, 72 T., 272, 10 S. W. R., 458, *Hanley v. Williams*, 2 App. C. C., Sec. 223; *Bean v. Toland*, 1 App. C. C., Sec. 122; *Cross v. Peterson*, 1 App. C. C., Sec. 1061; *Porter v. Porter*, 2 App. C. C., Sec. 433; *Gentry v. Bowser*, Id., C. A., 388, 21 S. W. R., 569; *Haby v. Koenig*, 2 U. C., 439; *Gascomb v. Drews*, 2 App. C. C., Sec. 95, 1 App. C. C., 1057; *Ry. Co. v. Thompson*, 2 App. C. C., Sec. 568; *Dawsenpauer v. Denne*, 51 T., 480, 1 App. C. C., 397.

Jurisdiction given by this section needs no legislation. *Hillebrand v. McMahan*, 59 T., 450.

District court has jurisdiction to enter judgment on a peace bond of \$200. *St. v. San Miguel*, 23 S. W. R., 389, 4 C. A., 182.

The power to disbar an attorney is inherent in the court possessing such jurisdiction as is given to the district court by the constitution. *Scott v. St.*, 86 T., 323, 24 S. W. R., 789.

The district court has jurisdiction of a bill of discovery to compel a judgment debtor to disclose assets on which execution may be levied. *Cargill v. Kountzee Bros.*, 86 T., 387, 22 S. W. R., 1015.

The district court has no jurisdiction of a suit to recover money, the exact amount of which is \$500. *Ry. Co. v. Ramboldt*, 67 T., 654, 4 S. W. R., 356; *Carroll v. Silk*, 11 S. W. R., 116, 70 T., 23; *Garrison*

v. Express Co., 69 T., 345, 6 S. W. R., 842; Wood Co. v. Cate, 75 T., 219, 12 S. W. R., 536; Henderson v. Loan Ass'n., 7 S. W. R., 836.

This amendment did not affect jurisdiction already vested in the district court by acts diminishing the jurisdiction of county courts. Gossett v. Muuro, 26 S. W. R., 781.

Where a district court had jurisdiction of a suit, but afterwards, by a new constitution, exclusive jurisdiction was give to county court during the pendency of a suit the court should continue it until the legislature makes provision for its transfer. McCreary v. Waco Lodge, 2 U. C., 675.

A petition for a writ of *certiorari* to revoke letters of administration, issued by the county court and for the appointment of a new administrator, cannot be originally brought in the district court. Its jurisdiction in such cases being appellate only. Ballard v. Wheeler, 56 S. W. R., 946.

Under the clause "shall have general jurisdiction over all causes of action, whatever, for which a remedy is not provided for by law or by this section," district courts have power to try quo warranto proceedings. Dean v. St., 88 T., 295, 31 S. W. R., 185.

A case not brought either by the amount in controversy or any other feature within the jurisdiction of any court must, under this section, come within the jurisdiction of the district court. Gamel v. Smith, 21 S. W. R., 628, 3 C. A., 22.

A narrow and liberal construction of the constitution, relating to the jurisdiction of the district court, will not be adopted when it will leave no tribunal competent to take jurisdiction. St. v. Degress, 53 T., 387. (Tunstall v. St., 51 T., 82, Trigg v. St., 49 T., 643, distinguished).

This section, as amended, did not repeal act of 1884, requiring appeals from the commissioners' court in proceedings for opening roads to be taken to the county court. Bell v. Bal-Pinto County, 29 S. W. R., 929.



The district court cannot attach an order of the commissioner court allowing a claim against a county. *Vogt v. Bexar County*, 42 S. W. R., 127.

R. S., article 4693, giving one dissatisfied with the assessments of drainages sustained in opening a road, the right to appeal comes within the jurisdiction, granted in this section. *Karnes County v. Nichols*, 54 S. W. R., 656.

A lien on a railroad given to laborers for labor performed is a lien on land, and the district court has jurisdiction to enforce such a lien. *Ry. Co. v. Barnett*, 55 S. W. R., 986.

The jurisdiction of the district court in suits in behalf of the state to recover escheats, forfeitures, etc., is not dependent upon the amount in controversy. *St. v. Eggerman*, 81 T., 569, 16 S. W. R., 1067.

But see *Grady v. Rogan*, 2 App. C. C., section 259, where a suit by county judge on liquor dealer's bonds was not a suit on behalf of the state and the amount claimed determined the jurisdiction.

R. S., articles 3383, 3393, authorizing removals from office on account of official misconduct, does not extend to cases of drunkenness, so as to require actions therefor to be brought under this section. *Craig v. St.*, 31 Cr. App., 29, 19 S. W. R., 504.

Negligently permitting a prisoner to escape is official misconduct. *Hatch v. St.*, 10 Cr. App., 515, (*Watson v. St.*, 9 Cr. App., 212; *Gordon v. St.*, 2 Cr. App., 154, overruled).

Demanding fees not allowed by law is official misconduct. *Breckenridge v. St.*, 7 Cr. App., 513.

District courts can supersede county courts when empowered by this section. *Nora v. St.*, 9 Cr. App., 406, *Chapman v. St.*, 16 Cr. App., 76. No. 2.

The right to issue writs of habeas corpus carries along with it the right to hear and determine the right involved in it. *Ex parte Angus*, 28 Cr. App., 293.

Erroneous judgment must be corrected by appeal and not by injunction. *Ry. Co. v. Dowe*, 60 T.



The constitution of 1845 gave the district court a supervisory control over inferior courts (*Newson v. Chrisman*, 9 T., 115, *Smith v. Smith*, 11 T., 102, *Batzein v. Cox*, 22 T., 63), but this supervision is not given by the present constitution.

SEC. 9. There shall be a clerk for the district court of each county, who shall be elected by the qualified voters for the state and county officers, and who shall hold his office for two years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of vacancy the judge of the district court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

Nothing in this section prevents the legislature from providing two district courts for one county. *Lytte v. Half Bros.*, 75 T., 128, 12 S. W. R., 610.

SEC. 10. In the trial of all causes in the district courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury, but no jury shall be empaneled in any civil case, unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum and with such exceptions as may be prescribed by the legislature.

Where the court at the first day of the term orders

that no cases on the jury docket shall be tried at that time, an application for a jury trial, not made till the day on which the case is set for trial, was properly refused. *Petri v. Lincoln Nat. Bank*, 84 T., 153, 19 S. W. R., 379; *Allen v. Plummer*, 71 T., 546; *Allyn v. Willis*, 65 T., 65; *Gallagher v. Goldfrank*, 63 T., 473; *Hardin v. Blackshear*, 60 T., 132.

It is not error for a trial court to refuse to place a cause on a jury docket and allow it to be tried by a jury, where the jury docket for the term has been disposed of, before a demand for a jury has been made, and two terms of the court have passed away. *Petri v. Bank*, 83 T., 424, 18 S. W. R., 752.

Failure to demand a jury is not waived, when the regular judge was disqualified, and the special judge who was to try the case, had not qualified. *Hays v. Hays*, 66 T., 607.

Right of jury is lost where the jury fee was not paid until thirty-four hours after the demand for the jury was made, and after the jury trials had been passed. *Cabell v. Shoe Co.*, 81 T., 104.

Where a regular presiding judge refused to give way to a special judge, who had been appointed to try the case, the special judge held court in another room, but being unable to get hold of the list of jurors for the week, ordered the sheriff to summons a jury. Held that the jury was not a legal one. *Daniel v. Bridges*, 73 T., 150, 11 S. W. R., 121.

SEC. 11. No judge shall sit in any case wherein he may be interested, or when either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the supreme court, the court of criminal appeals, the

[Secs. 11 and 12, Art. 5, declared adopted Sept. 22, 1891].

court of civil appeals, or any member of either, shall be thus disqualified to hear and determine any case, or cases in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of such cause or causes. When a judge of the district court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the district judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. The disqualification of judges of inferior tribunals shall be remedied, and vacancies in their offices filled, as may be prescribed by law.

The purpose of this amendment was to meet the emergency of one judge being disqualified and the remaining two unable to agree. *Nalle v. City of Austin*, 85 T., 520, 22 S. W. R., 668.

The fact that one member is disqualified to try a case, does not prevent the other two members from proceeding therewith. *Id.* *Holt v. Maverick*, 86 T., 457, 25 S. W. R., 607; *Guinn v. Daniel*, 85 T., 563, 22 S. W. R., 876.

A judge can be disqualified only for some of the causes specified in the constitution. *Taylor v. Williams*, 26 T., 583.

A disqualified judge can make no order. *Gaines v. Barr*, 60 T., 676; *Hodde v. Susan*, 58 T., 394 (*Garret v. Gaines*, 6 T., 435; *Chambers v. Hodges*, 23 T., 112).

A judge, while holding a term in one county, may call in another district judge to hold a special term for him in another of his counties. *Munzeheimer v. Fairbanks*, 82 T., 351, 18 S. W. R., 697.

The legislature could provide that where the county judge is disqualified, the case should be transmitted to the district court, or that a special judge be appointed. *Dulaney v. Walsh*, 90 T., 329, 38 S. W. R., 748.

#### RELATIONSHIP.

A judge is not disqualified from hearing a cause, because his father, who is an attorney for one of the parties, has a contingent fee in the result. *Winston v. Masterson*, 87 T., 202, 27 S. W. R., 768.

The disqualification of a judge, because he was father-in-law of a plaintiff, is removed, when his daughter, the plaintiff's wife, dies without issue. *Yerby v. Martin*, 38 S. W. R., 541.

Where a defendant in a suit is husband of one who is a sister to the judge's wife, the judge is disqualified if the husband represents the wife or represents the community estate, or if a judgment against them would affect the community estate of the wife. *Schultze v. McLeary*, 73 T., 92, 11 S. W. R., 924.

A judge is not disqualified where the great grandfather was a common ancestor of a party to an action and of the presiding judge. *Baker v. McRimmon*, 48 S. W. R., 742.

A judge is disqualified when he is related to the party in the third degree, either by affinity or consanguinity. *Felbroth v. Gilder*, 1 App. C. C., Sec. 1060, 1 App. C. C., Sec. 533.

Relationship between a surety, upon a claimants' bond, in a trial for the right of property, and the

judge, does not disqualify him. *Hodde v. Susan*, 58 T., 389.

A judge is disqualified if his sister-in-law is interested in the case, although her name is not mentioned in the pleadings. *Gaines v. Barr*, 60 T., 676.

A judge, who is a brother-in-law to a stockholder and president of a corporation, is not disqualified to try an action to which such corporation is a party. *Lewis v. Mill Co.*, 23 S. W. R., 338, 3 App. C. C., Sec. 306.

#### INTEREST.

In a suit by a taxpayer to enjoin the collection of a city tax, a judge of the court of the Civil Appeals, who was a property holder in the city, is disqualified. *Nalle v. City of Austin*, 85 T., 520, 22 S. W. R., 668.

A judge of the court of Civil Appeals, who is a taxpayer in a certain city, is not interested in an action against the city for personal injuries, caused by its negligence, so as to be disqualified. *Dallas v. Peacock*, 89 T., 58, 33 S. W. R., 220 (*Nalle v. City of Austin* distinguished).

A judge who owns property subject to a city tax, which is sought to be collected, is disqualified from rendering judgment enjoining its collection. *Wetzel v. S. T.*, 5 C. A., 17, 23 S. W. R., 825.

Where an action is brought to recover two tracts of lands, the fact that a judge had an interest in one of them does not disqualify him from trying the case on severance, where the only interest claimed by the defendant as to whom it is severed is in the other tract. *Grisby v. May*, 84 T., 240, 19 S. W. R., 343.

A mere interest in a question involved in a suit, there being no actual interest in the subject matter, does not disqualify a judge from sitting in the trial of the case. *McFaddin v. Preston*, 54 T., 403.

In an action to recover the balance due on the salary of a county official, the county judge, being interested in it to the extent of the costs of making him a party, is disqualified. *Collingsworth v. Myers*, 35 S. W. R., 414.

Interest disqualifying a judge does not mean every partiality, prejudice or bias. *Clock v. Taylor*, 3 App. C. C., Sec. 201.

See where the county judge had no interest in the subject matter. *Grady v. Rogan*, 2 App. C. C., Sec. 260.

A county judge is not disqualified from trying a suit brought upon convicts' bonds. *Peters v. County Judge*, 1 App. C. C., Sec. 304.

The fact that a judge was surety on the bond of a temporary administrator, does not disqualify him from passing on the acts of such person as regular administrator. *Halbert v. Martin*, 30 S. W. R., 388.

Fees of office do not disqualify. 3 App. C. C., Sec. 323; 1 App. C. C., Sec. 1068 (*Taylor v. Williams*, 26 T., 505; *Chambers v. Harper*, 23 T., 112).

The possibility of a suit against one, formerly an officer of a corporation, for *ultra vires*, would not disqualify him as judge. *Yaeger v. Showalter*, 83 T., 99, 18 S. W. R., 326.

In a trespass to try title case, if the judge in whose court the cause is pending has possession of the land and claims title to it, he is interested within the meaning of this section. *Casey v. Kinsey*, 23 S. W. R., 818.

#### ATTORNEYSHIP.

The mere fact that the attorney in conversation with another attorney expressed an opinion concerning the validity of the bail bond would not disqualify the attorney, afterwards elected judge, from trying the case, made by the forfeiture of the bail bond. *Hobbs v. Campbell*, 79 T., 360, 15 S. W. R., 282.

If an attorney has been consulted and given advice as to matters in dispute between the parties, he can not sit as a judge in that case, although he charged no fee for his services. *Slaven v. Wheeler*, 58 T., 23; *Ry. Co. v. Ryan*, 44 T., 426.

A county judge, who as chairman of the commissioners' court advised them to sue defendant, is not



disqualified from hearing the case. *Clack v. Taylor County*, 3 App. C. C., Sec. 201.

This section does not disqualify a judge to a case pending at the time his services as counsel were invoked. *Slaven v. Wheeler*, 58 T., 23.

A judge is not disqualified in an ejectment case, by reason of his advice in the attachment suit. *Cullen v. Drane*, 82 T., 484, 18 S. W. R., 590.

A law firm acting for citizens obtained an election for incorporation of the town. One of the firm became district judge. Held in a quo warranto proceedings based upon the legality of the incorporation that the judge was disqualified. *St. v. Burks*, 82 T., 585, 18 S. W. R., 662.

Where a judge acted as counsel at a prior hearing in the case the judgment is void, although the judge presided with consent of both parties. *Abram v. St.*, 31 Cr. App., 449, 20 S. W. R., 987.

The test of disqualification is: relationship, pecuniary interest or having been counsel in the case. *Wilkes v. St.*, 27 Cr. App., 381, 11 S. W. R., 416; *Johnson v. St.*, 28 Cr. App., 526, 16 S. W. R., 418.

If some questions of law and fact arise in two cases, the fact that one was counsel in the first does not disqualify him from acting as judge in the second. *Koenig v. St.*, 33 Cr. App., 367, 26 S. W. R., 835.

A judge is not disqualified because he was district attorney at the time the accused was tried before an examining court and he did not appear at the examining trial nor heard the case. *Wilks v. St.*, 11 S. W. R., 415.

Having been counsel in a case does not disqualify attorney from afterwards presiding as a judge upon the bail bond case. *Haverty case*, 32 Cr. App., 606.

That stolen property belonged to the judge does not disqualify him from trying the party accused of the theft. *Davis v. St.*, 44 T., 523.

SEC. 12. All judges of courts of this state shall,

by virtue of their office, be conservators of the peace throughout the state. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the State of Texas, and shall conclude "against the peace and dignity of the state."

The style of the attachment writ must be "The State of Texas." *King v. Robinson*, 2 App. C. C., Sec. 554, 4 App. C. C., Sec. 302.

Writs and processes issued by the recorder's court must run "In the name of the State of Texas." *Johnson v. Hanscom*, 90 T., 322.

A prosecution ending "against the peace and dignity of the city" is void. *Ex parte Fagg*, 38 Cr. App., 573, 44 S. W. R., 294.

The legislature has no right to grant to a municipal corporation right to issue prosecutions ending "against the peace and dignity of the city." *Id.*

A process commencing in the name and by the authority of the City of Ft. Worth and concluding "against the peace and dignity of the City of Ft. Worth" violates this section. *Leach v. St.*, 36 Cr. App., 249, 36 S. W. R., 471.

An information failing to conclude "against the peace and dignity of the state" is fatal. *Bird v. St.*, 37 Cr. App., 409, 35 S. W. R., 382.

It is not necessary that an affidavit on which an information is based begin "In the name and by the authority of the State of Texas." *Johnson v. St.*, 31 Cr. App., 465, 20 S. W. R., 980.

A writ commencing "The State of Texas to the sheriff or any constable, greeting" is sufficient. *Brown v. St.*, 28 Cr. App., 65.

The omission of the word "The" before the word "State" makes the indictment fatal. *Thompson v. St.*, 15 Cr. App., 39.

An information commencing "By and with the authority of the State," the words "of Texas" being omitted, is fatal. *Id.*

An indictment which concludes "against the peace and dignity of the state, this the 3rd day of November, 1882," is bad. *Haun v. St.*, 13 Cr. App., 383.

Conformity to this section is requisite to the validity of every indictment. *Cox v. St.*, 8 Cr. App., 256; *Holden v. St.*, 1 Cr. App., 225; *Haun v. St.*, 13 Cr. App., 583; *Saine v. St.*, 14 Cr. App., 144; *Thompson v. St.*, 15 Cr. App., 198; *Wright v. St.*, 37 Cr. App., 3; *Bird v. St.*, *Id.*, 408; *Rowlett v. St.*, 23 Cr. App., 191; *Malton v. St.*, 29 Cr. App., 527.

The beginning and conclusion of prosecutions are words of substance as well as form. *Id.* *St. v. Pratt*, 44 T., 93.

"By and with the authority of the State," the words "of Texas" being left out is defective. *Saine v. St.*, 14 Cr. App., 144.

"Against the peace and dignity of the State of Texas," the words "of Texas" being added, will not invalidate the indictment. *St. v. Pratt*, 44 T., 93.

A complaint in a misdemeanor case does not have to commence in the words required above. *Jefferson v. St.*, 24 Cr. App., 535, 7 S. W. R., 244.

SEC. 13. Grand and petit juries in the district courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the district courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it.

When, pending the trial of any case, one or more jurors, not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; *provided*, that the legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Nine men constitute a quorum of the grand jury for the transaction of business. *Watts v. St.*, 22 Cr. App., 572.

An indictment presented by thirteen men is a nullity, although appellant made no objection. *McNeese v. St.*, 19 Cr. App., 95.

An objection to such an indictment is available at any time in the proceedings of the lower court. *Smith v. St.*, 19 Cr. App., 95.

A constitutional grand jury consists of twelve men. *Lott v. St.*, 18 Cr. App., 627; *Rainey v. St.*, 19 Cr. App., 479; *McNeese v. St.*, 19 Cr. App., 48; *Smith v. St.*, *Id.* 95.

And an indictment presented by a purported grand jury composed of any number of men is a nullity. *Harrell v. St.*, 22 Cr. App., 692; *Ex parte Swann*, 19 Cr. App., 323; *Williams v. St.*, *Id.* 265.

Such an error goes to the foundation of the suit, and can be availed of in any manner and at any time in the proceedings and even without exception below. *Id.*

A constitutional jury in the district court consists of twelve men. *Jester v. St.*, 26 Cr. App., 369, 9 S. W. R., 616; *Bullard v. St.*, 38 Cr. App., 504; *Huebner v. St.*, 3 Cr. App., 459.

A petty jury must consist of the exact number prescribed by the constitution. *Stell v. St.*, 14 Cr. App., 59.

Neither the validity of the indictment nor of the proceedings is affected by a discharge of one of the

grand jury men, before the presentment of the indictment. *Watts v. St.*, 22 Cr. App., 572; *Jackson v. St.*, 25 Cr. App., 314; *Woods v. St.*, 26 Cr. App., 490.

The object of the provision making nine men a quorum, was intended to meet any and all emergencies that might happen, for instance, the death of a member. *Drake v. St.*, 25 Cr. App., 310.

A body composed of more than twelve men is not a grand jury. *Ex parte Reynolds*, 34 S. W. R., 120.

A person is not disabled from sitting on account of mental distress caused by sickness in his family or of others demanding his attention, so as to empower the remaining jury to render a verdict over the objection of either party. *H. and T. C. v. Waller*, 56 T., 331.

SEC. 14. The judicial districts in this state, and the time of holding the courts therein, are fixed by ordinance forming part of this constitution, until otherwise provided by law.

Under this section the legislature may increase or diminish the number of judicial districts and prescribe what territory shall be embraced in a given district. *Lytle v. Half Bros.*, 75 T., 129, 12 S. W. R., 610.

There is no constitutional restriction (Art. 5, Secs. 7 and 14) upon the powers of the legislature, to authorize both courts, to be held in the same district. *Wheeler v. Wheeler*, 76 T., 794, 13 S. W. R., 305.

SEC. 15. There shall be established in each county in this state a county court, which shall be a court of record; and there shall be elected in each county by the qualified voters, a county judge, who shall be well informed in the law of the state, shall be

a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as a compensation for his services, such fees and perquisites as may be prescribed by law.

This section does not fix a disqualification for one to be county judge. Nor does it warrant in a contest for that office an inquiry, before a jury trying the case, of the legal knowledge of the party. *Little v. State*, 75 T., 617, 12 S. W. R., 965.

The term "well informed in the law" was not intended to fix a ground for disqualification to hold the office of county judge.

SEC. 16. The county court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice's court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200; and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value \$200 and not exceed \$500, exclusive of interest; and concurrent jurisdiction with the district court when the matter in controversy shall exceed \$500 and not exceed \$1000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which justices' courts have original



jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed \$20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from justice's court there shall be a trial *de novo* in the county court, and appeals may be prosecuted from the final judgment rendered in such cases by the county court, as well as all cases, civil and criminal, of which the county court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the court of civil appeals, and in such criminal cases to the court of criminal appeals, with such exceptions and under such regulations as may be prescribed by law. The county court shall have the general jurisdiction of a probate court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons *non compos mentis*, and common drunkards, including the settlement, partition, and distribution of estate of deceased persons; and to apprentice minors, as provided by law; and the county court or judge thereof shall have power to issue writs of injunction, *mandamus*, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of *habeas corpus* in cases where the offense

charged is within the jurisdiction of the county court, or any other court or tribunal inferior to said court. The county court shall not have criminal jurisdiction in any county where there is a criminal district court, unless expressly conferred by law; and in such counties appeals from justices' courts and other inferior courts and tribunals in criminal cases shall be to the criminal district court, under such regulations as may be prescribed by law, and in all such cases an appeal shall lie from such district court to the court of criminal appeals. When the judge of the county court is disqualified in any case pending in the county court, the parties interested may by consent appoint a proper person to try said case, or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

This section does not give the county court jurisdiction to try title to an office, though the value of the same is less than \$500. *Dean v. St.*, 88 T., 290, 30 S. W. R., 1047.

The county court has jurisdiction of all matters pertaining to the administration of estates. *Dodson v. Wortham*, 45 S. W. R., 858.

The county court may enjoin a sale under a writ of attachment issued by the justice court after the property had been duly attached in a suit pending in the county court. *Moody v. McRimmon*, 87 T., 260, 28 S. W. R., 279.

The county court has exclusive jurisdiction to issue an injunction to restrain the sale of personal prop-

erty for taxes, the value of which amounts to more than \$200. *Lazarus v. Swofford*, 39 S. W. R., 389.

County courts may in certain cases issue writs of injunction, though not necessary to enforce its jurisdiction. *Dean v. St.*, 88 T., 30, S. W. R., 1007, 31 S. W. R., 185.

County court can not supervise or control inferior courts except by appeal or *certiorari*. *Carlisle v. Coffee*, 59 T., 391.

County courts can issue writs of injunction only to enforce its jurisdiction. *Fendrick v. Shea*, 1 App. C. C., Sec. 912; *Grant v. Quinn, Id.*, 733.

It cannot enjoin a judgment or tax for less than \$200. 1 App. C. C., Secs. 134, 554, 567, 986, 1240, 1129, 1140, 1209; *Carlisle v. Coffee*, 59 T., 391.

Where the county judge is disqualified, the legislature could provide that the case be transferred to the district court or that a special judge be appointed. *Dulaney v. Walsh*, 90 T., 329, 38 S. W. R., 748 (37 S. W. R., 615, affirmed); *Bank v. Fitzpatrick*, 29 S. W. R., 912 (28 S. W. R., 95, overruled).

The part of this section providing that when a judge is disqualified in any case, the parties interested may by consent appoint a proper person to try the case, is enforced without legislation. *Parker Co. v. Jackson*, 23 S. W. R., 24, 5 C. A., 36.

This section, as amended in 1891, does not imperatively require the legislature to provide for the appointment of a special judge when the parties fail to agree. It was merely to enlarge the powers of the legislature to enable it to provide for the appointment of a special judge. And did not mean to take away the power of providing for a transfer to the district court. *Bank v. Fitzpatrick*, 88 T., 215, 30 S. W. R., 1053, 29 S. W. R., 912, 28 S. W. R., 95.

This section and section eight of this article conflicts, but this section prevails. And the county court and not the district court has jurisdiction of a money suit where the amount in controversy is exactly \$500. *Wetzel v. Simon*, 87 T., 403, 28 S. W. R., 942; *Better-*

ton v. Echols, 85 T., 212, 20 S. W. R., 63; G. C. & S. F. v. Rambolt, 67 T., 654, 4 S. W. R., 356; Erwin v. Blanks, 60 T., 583; Cleveland v. Turfs, 69 T., 580, 7 S. W. Rep., 72; Carney v. Marsalis, 77 T., 62, 13 S. W. R., 636; Harrison v. Express Co., 69 T., 345, 6 S. W. R., 842; Carroll v. Solk, 70 T., 32, 11 S. W. R., 116.

The county court has no jurisdiction where the amount in controversy exceeds \$1000. Gimel v. Gomprecht, 89 T., 497, 35 S. W. R., 470.

Attorneys fees are considered a part of the original amount in determining the jurisdiction of the courts. Moore v. Fay, 4 App. C. C., 199; C. C. & S. F. v. Wersham, 23 S. W. R., 30; Roberts v. Pilmore, 41 T., 617; Miner v. Bank, 53 T., 559, 1 App. C. C., Sec. 557; Rainey v. Laudaudale, 30 S. W. R., 1084.

Interest given as apportioned damages is included in the amount in controversy. Schultz v. Tessman, 92 T., 489, 49 S. W. R., 1031.

This section, as amended in 1891, did not restore the jurisdiction to the county courts, previously taken from it and vested in the district court. Muenick v. Oppenhiemer, 86 T., 586, 26 S. W. R., 496.

The word "interest" refers merely to interest which in certain cases is given by statute, and not to interest allowed without statutory provisions, as part of damages, to be recovered. Smelser v. Baker, 29 S. W. R., 377.

Law granting appeals from justice to county court where the amount in controversy exceeds \$20 is constitutional. Mimam v. Eidman Bros., 1 App. C. C., Secs. 629-630.

Appeals lies to county court where amount in controversy is \$20, though the judgment appealed from is less than \$20. Brazoria County v. Calhoun, 61 T., 223; Smith v. Giles, 65 T., 341; Grooms v. Atascosa Co., 29 S. W. R., 73; Piedro v. Newman, Id., 74.

If defendant pleads counter claim amounting to more than \$20 and judgment goes against him, he may appeal though the amount is less than \$20. Roberts

v. McCamant, 70 T., 743, 8 S. W. R., 543; G. C. & S. F. v. Tacquard, 3 App. C. C., Sec. 250.

The county court has appellate jurisdiction in proceedings to open roads. G. H. & S. A. Ry. Co. v. Baudat, 45 S. W. R., 939.

This section permits the county court to issue writs of *habaes corpus*, to enforce its jurisdiction over minors, in behalf of a father, who claims that his child is illegally restrained. Sterman v. Turner, 16 S. W. R., 787.

A county court cannot discharge on *habaes corpus* a person charged with a felony. Letcher v. Crowdell, 44 S. W. R., 197.

Original and concurrent jurisdiction of a county court, in misdemeanor cases, punishable by fine, as provided by this section before it was amended, was not altered by this amendment. Ex parte Coombs, 37 Cr. App., 648, 44 S. W. R., 854.

Where fine does not exceed \$200 jurisdiction of the county court is concurrent with the justice court. Woodward v. St., 5 Cr. App., 296; Solon v. St., Id., 301; Jennings v. St., Id., 298; Leatherwood v. St., 6 Cr. App., 244; Chaplin v. St., 7 Cr. App., 87; Gallaway v. St., 23 Cr. App., 398; Ballew v. St., 26 Cr. App., 483.

It has concurrent jurisdiction with the justice court, in cases prohibiting cards to be played in a public place. Ballew v. St., 26 Cr. App., 483.

County court cannot try a felony case. Davis v. St., 2 Cr. App., 184; Blunt v. St., 9 Cr. App., 234.

County court has jurisdiction of a misdemeanor case punishable by imprisonment in the county jail. Reddick v. St., 4 Cr. App., 32.

County court has no appellate jurisdiction from justice court where the latter court had no jurisdiction. Hecker v. St., 4 Cr. App., 234; Billingsby v. St., 3 Cr. App., 686; Neil v. St., 43 T., 91.

This section requires appeals to be tried upon the original papers and upon the same issues had below

and does not require nor authorize the filing of an information, on the appeal of a criminal case, tried upon an affidavit. *Ex parte Morales*, 53 S. W. R., 107.

This section and section 19 of this Art. discussed. *Id.*

SEC. 17. The county court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation, as may be provided by law, and said court shall hold a term for criminal business once in every month, as may be provided by law. Prosecution may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. And juries empaneled in the district courts shall inquire into misdemeanors, and all indictments therefor returned into the district courts, shall forthwith be certified to the county courts, or other inferior courts having jurisdiction to try them, for trial; and if such indictment be quashed in the county, or other inferior court, the person charged shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the county court shall consist of six men; but no jury shall be empaneled to try a civil case, unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.



The failure to pay jury fee on first day of the term, does not deprive a party of the right of trial by jury unless it should operate to the prejudice of the opposite party. *Allen v. Plummer*, 71 T., 546, 9 S. W. R., 672.

It is error to refuse jury where demand was made on the first day of the term and there was an offer to make a deposit of the fees upon a subsequent day, while juries are still subject to the control of the court. *Allyn v. Willis*, 65 T., 65; *Gallagher v. Goldbank*, 63 T., 473; *Hardin v. Blackshear*, 60 T., 32.

County court cannot discharge one of the jurymen and force a trial by the remaining five. *Jackson v. Coates*, 43 S. W. R., 24 (C. A.)

This amendment did not go into effect until Sep. 23rd, 1883. *Sewell v. State*, 15 Cr. App., 57; *Wilson v. St.*, 15 Cr. App., 150, 2 App. C. C., Sec. 289.

SEC. 18. Each organized county in the state, now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present county courts shall make the first division. Subsequent divisions shall be made by the commissioners' court provided for by this constitution. In each such precinct there shall be elected, at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; *provided*, that in any precinct in which there may be a city of eight thousand or more inhabitants, there shall

be elected two justices of the peace. Each county shall in like manner be divided into four commissioners' precincts, in each of which there shall be elected, by the qualified voters thereof, one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge as presiding officer, shall compose the county commissioners' court, which shall exercise such powers and jurisdiction over all county business as is conferred by this constitution and the laws of the state, or as may be hereafter prescribed.

An order of the commissioners' court, abolishing precinct 5 of their county and creating a new precinct 5 composed of that territory and another precinct, is constitutional. *State v. Rigsby*, 43 S. W. R., 272.

The commissioners' court can only exercise such power as the constitution for the legislature has specially conferred on them. *Mills County v. Lampassas County*, 90 T., 606, 40 S. W. R., 403; *Bland v. Orr*, 90 T., 492, 39 S. W. R., 558.

Under this section, limiting the power, which the legislature may require of commissioners court, to "county business," the commissioners' court cannot be compelled to provide for the sale of the property of a supposed corporation, whose charter has been declared void. *Light Co. v. Keenan*, 88 T., 201, 30 S. W. R., 868.

This section does not confer upon the commissioners' court any authority to bring suits upon the bonds of officials of the county. *Terrell v. Green*, 88 T., 542, 31 S. W. R., 631.

This section makes the commissions' court the governing body for the county business. *Jernigan v. Finley*, 38 S. W. R., 24.

The commissioners' court has no power to compromise the debt of a defaulting county treasurer by accepting a deed of land from a surety on his bond. *Bland v. Orr*, 90 T., 494, 39 S. W. R., 558.

A commissioners' court is a court of general jurisdiction, when acting in its sphere, and a judgment, declaring an overseer guilty of contempt, is purely a judicial act, for which the members of the court are not liable in a civil action. *Gaines v. Newbrough*, 34 S. W. R., 1048.

The number of deputies an officer may employ is not county business and the commissioners court has no authority, under this section, with reference to the same. *Clark v. Finley*, 54 S. W. R., 343.

Act of 1897, providing that the county judge shall designate the number of deputies to which certain officers are entitled, does not violate this Sec. *Id.*

The officers to whom this section applies are state officers, although acting within the county. *Id.*

A law authorizing an appeal to the district court, from the assessment of damages by the commissioners' court, is constitutional. *Bexar County v. Terrell*, 14 S. W. R., 62 (*Ex parte Towles*, 48 T., 414, distinguished).

The commissioners' court has authority to order a local option election. *Chapman v. St.*, 37 Cr. App., 167.

The act of the 26th legislature, creating corporation courts and vesting them with jurisdiction of state offenses, does not violate this section limiting the number of the justices of the peace. *Ex parte Wilbarger*, 55 S. W. R., 969.

SEC. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the pen-

alty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the county courts shall be allowed in all cases decided in justices' courts where the judgment is for more than twenty dollars, exclusive of costs, and in all criminal cases, under such regulations as may be prescribed by law. And the justices of the peace shall be *ex officio* notaries public; and they shall hold their courts at such times and places as may be provided by law.

Under this section "giving justice of the peace jurisdiction as the legislature shall confer," the legislature has power to confer on the justice court jurisdiction in forcible entry and detainer cases. *Clayton v. Hunt*, 88 T., 595, 32 S. W. R., 876.

The words "amount" and "matter" have the same meaning. *Smith v. Giles*, 65 T., 341; *Brazoria County v. Calhoun*, 611, 223.

Attorney fees, when stipulated, are part of the original amount. *Waters v. Walker*, 17 S. W. R., 1085, 2 App. C. C., Sec. 93.

Where the amount exceeds \$200, the justice court has no jurisdiction. *Marx v. Carlisle* App. C. C., Sec. 93.

The legislature has a right to determine in what

cases an appeal bond shall be required in an appeal from the justice court. *Yarborough v. Collins*, 42 S. W. R., 1052.

The court has no jurisdiction on a counter claim, the item of which, when taken together, exceed \$200. *Cain v. Culbreadth*, 35 S. W. R., 809.

Justice court cannot foreclose a mortgage, where the value of the property exceeds \$200. *Conner v. Jacobs*, 51 S. W. R., 640; *Cattula v. Goggan*, 77 T., 33, 13 S. W. R., 742; *Scwartz v. Frees*, 31 S. W. R., 214.

The clause "shall hold their courts at such times and places as may be provided by law" discussed. *Stone v. Hill*, 72, 1544.

The legislature can confer on a recorders court jurisdiction which is here given to the justice court. *May v. Finley*, 91 T., 53; *Harris County v. Stewart*, 91 T., 133, 41 S. W. R., 650; *Ex parte, Nelbarger*, 55 S. W. R.

The justice court alone has jurisdiction over a claim for a deficit in acreage of land sold and warranted by the plaintiff, where the value of the deficit is within the jurisdiction of the court. *Crawford v. Sandrige*, 75 T., 383, 12 S. W. R., 853.

Justices of the peace can hold terms of court for transaction of civil business only at such times and places as may be fixed by the commissioners court in their counties. *Koehler v. Earl*, 77 T., 189, 14 S. W. R., 28.

A recorders court has no jurisdiction to try offenses, given by this section to the justice court. *Ex parte Fagg*, 38 Cr. App., 573, 44 S. W. R., 294; *Leach v. St.*, 36 Cr. App., 248, 36 S.W.R., 471; *Ex parte Knox*, 39 S. W. R., 670.<sup>1</sup>

A municipal charter, which confers on a city court exclusive jurisdiction of all violations of the Sunday law, is unconstitutional because it destroys the jurisdiction of the justice court. *Ginnocchio v. St.*, 30 Cr. App., 584, 18 S. W. R., 82, to D. v. St., 30 Cr. App., 667, 18 S. W. R., 642.

1. See cases under Art. 5, Secs. 1 and 21.

City courts cannot try offense given to the justice court. *Ballard v. Dallas*, 44 S. W. R., 869; *Crowley v. Dallas*, 44 S. W. R., 865.

Justice court has no jurisdiction of misdemeanors where the fine exceeds \$200. *Billingsby v. St.*, 3 Cr. App., 686; *Ueker v. St.*, 3 Cr. App., 234; *Ex parte Phillips*, 33 Cr. App., 126.

Where punishment is by fine of \$200, justice court has jurisdiction. *Davis v. St.*, 23 S. W. R., 892.

Justice court has no jurisdiction of misdemeanors, which are punishable by imprisonment. *Tuttle v. St.*, 1 Cr. App., 364; *Jacobs v. St.*, 35 Cr. App., 410.

It may imprison for non-payment of fines. *Tuttle v. St.*, 1 Cr. App., 364.

An offense punishable by fine of \$250 does not come within the jurisdiction of the justice court. *Ex parte Phillips*, 33 Cr. App., 126.

Justice court is limited by its precinct, except when acting as an examining court. *Hart v. St.*, 15 Cr. App., 202; *Kery v. St.*, 17 Cr. App., 178; *Childers v. St.*, 30 Cr. App., 160.

SEC. 20. There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall be clerk of the county and commissioners' courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the legislature, and a vacancy in whose office shall be filled by the commissioners' court, until the next general election for county and state officers; *provided*, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.



SEC. 21. A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the governor, and hold his office for the term of two years. In case of vacancy the commissioners' court of the county shall have power to appoint a county attorney until the next general election. The county attorneys shall represent the state in all cases in the district and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall, in such counties, be regulated by the legislature. The legislature may provide for the election of district attorneys in such district as may be deemed necessary, and make provision for the compensation of district attorneys and county attorneys; *provided*, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the state, and such fees, commissions and prerequisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and prerequisites as may be prescribed by law.

A writ of mandamus to compel a city to permit the county attorney to take charge of the prosecution, will be refused, although this section makes it the duty of the county attorney to represent the state in all the

prosecutions in the district and inferior courts. *Jackson v. Swayne*, 92 T., 242; 47 S. W. R., 711.<sup>1</sup>

Where there is a county attorney the provision in a charter of a city authorizing the city attorney to take charge of prosecutions, in the city courts, is unconstitutional, because that power is given to the county attorneys. *Harris County v. Stuart*, 91 T., 133, 41 S. W. R., 651.

The legislature can not empower the attorney general to take control of cases where the constitution makes the county attorney the representative. *State v. Moore*, 57 T., 307.

The power given to county attorneys "to represent the state in all cases in the district courts and in their respective counties," does not extend to instituting suits against private corporations, for exceeding their powers, unless it is with the sanction and in the name of the attorney general. *St. v. Paris Ry. Co.*, 55 T., 80.

A law entitling county attorneys to only part of their fees, attached to their office, does not violate this section. *Hare v. Grayson Co.*, 51 S. W. R., 656.

Where there is a county attorney, a city charter authorizing the city attorney to exercise the countys powers in the city court, violates this section. *Harris County v. Stewart*, 41 S. W. R., 650.

A county attorney has no authority to accept county convict bonds. *Ex parte Price*, 37 Cr. App., 275.

SEC. 22. The legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of county courts; and in cases of any such change of jurisdiction the legislature shall also conform the jurisdiction of the other courts to such change.

1. See cases under Art. 5, Secs. 1 and 19.

R. S., Art. 269, providing that an attorney, who collects money for his client and refuses to pay over the same, may be prosecuted against, in the district court, is a proper exercise, given by this section. *Blair v. Blanton*, 54 S. W. R., 321.

This section gives the legislature power to pass an act providing an appeal may be taken from an action of the board of equalization to the county court, and that such decision will be final. *Mort. Co. v. Board of Equalization*, 45 S. W. R., 757.

The legislature has the power to provide for an appeal from a commissioners court to the county court. *G. H. & S. A. Ry. Co. v. Baudt*, 45 S. W. R., 939.

An act allowing appeals from the county court, where the amount in controversy is \$100.00, or less, is constitutional. *Jones v. Jones*, 1 App. C. C., Secs. 200 and 201.

The legislature has no power to add to or withdraw from the jurisdiction of the district court, except when expressly authorized by this section. *Ex parte Whitlow*, 59 T., 273; *Ex parte Towels*, 48 T., 414; *Williamson v. Lane*, 52 T., 343.

Under authority conferred by this section, the legislature can change the jurisdiction of the county court in appellate as well as original matters and the act of Aug. 18, 1876, is constitutional. 1 App. C. C., Sec. 630.

This section was not changed by the adoption of the amendments in 1891, in reference to the judicial departments. *Muench v. Oppenheimer*, 86 T., 568, 26 S. W. R., 496.

Nor did the amendment affect jurisdiction, vested in the district court by the legislature, under this section. *Gossett v. Muro*, 26 S. W. R., 780.

The legislature has no power to add to or withdraw from the jurisdiction of the district court, except when expressly authorized by this section. *Ex parte Whitlow*, 59 T., 273; *Ex parte Towles*, 48 T., 414; *Williamson v. Lane*, 52 T., 343.

Act allowing appeals from the county court, where the amount in controversy is \$100 or less, is constitutional. *Jones v. Jones*, 1 App. C. C., Secs. 200-201.

The legislature has power to provide for an appeal from a commissioner's court to the county court. *G. H. & S. A. Ry. Co. v. Baudt*, 45 S. W. R., 939.

This section gives the legislature power to pass an act providing an appeal may be taken from an action of the board of equalization to the county court, and that such decision will be final. *Mort. Co. v. Board of Equalization*, 45 S. W. R., 757.

This section and section 8 of this article construed together. *Bell v. Palo Pinto County*, 29 S. W. R., 929.

This section empowers the legislature to confer jurisdiction on county courts to establish county boundaries. *Kaufman Co. v. McGaughey*, 33 S. W. R., 1020.

An act diminishing jurisdiction of county courts does not have to provide that the county court shall no longer have jurisdiction of such offenses. It is sufficient if it gives city court jurisdiction. *Corey v. St.*, 13 S. W. R., 778.

The legislature has power to divest the county courts of their jurisdiction and transfer the same to the district court. *Mora v. St.*, 9 Cr. App., 406.

The district court can supersede the county court only when empowered by an act passed in pursuance of this section. *Chapman v. St.*, 16 Cr. App., 76.

Secs. 22, 16 and 5 of this article construed together. *Johnson v. St.*, 26 Cr. App., 395.

The legislature has power to divest the county courts of their jurisdiction and transfer the same to the district court. *Mora v. St.*, 9 Cr. App., 406.

The district court can supersede the county court only when empowered by an act passed in pursuance of this section. *Chapman v. St.*, 16 Cr. App., 76.

See where Secs. 22, 16 and 5 of this article were construed together. *Johnson v. St.*, 26 Cr. App., 395.

Sec. 23. There shall be elected by the qualified voters of each county, a sheriff who shall hold his office for the term of two years, whose duties and perquisites and fees of office shall be prescribed by the legislature, and vacancies in whose office shall be filled by the commissioner's court until the next general election for county or state officers.

This section and Sec. 24 of this article discussed together. *Poe v. St.*, 10 S. W. R., 737, 72 T., 629.

Where a sheriff-elect died before qualifying, but after the expiration of the term of the sheriff in office, and though the sheriff elect was never in office, his death creates a vacancy within the meaning of this section, and the appointment by the commissioner's court of plaintiff was constitutional. *Maddox v. York*, 54 S. W. R., 24., (*St. v. Cocke*, 54 T., 482; *St. v. Catlin*, 84 T., 48; 19 S. W. R., 302, followed).<sup>1</sup>

SEC. 24. County judges, county attorneys, clerks of the district and county courts, justices of the peace, constables, and other county officers, may be removed by the judges of the district courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.

This section does not confer on district judges power to appoint a sheriff to fill a vacancy. Nor does it allow the legislature to give district courts power to

1. See cases under Art. 16, Sec. 17.

remove a sheriff and thus creates a vacancy, without a verdict of the jury, but the legislature can confer on district judges, power to suspend a sheriff temporarily, during a pendency of removal proceedings. *Poe v. St.*, 72 T., 629, 10 S. W. R., 737.

This section only refers to officers, who are officers in the full sense of the term, namely, those who have been elected or appointed and have qualified according to law. *Flaton v. St.*, 56 T., 94.

Legislative action is not necessary to enforce power of removal given to district judges by this section. *Trigg v. St.*, 49 T., 645.

This section declares "official misconduct, habitual drunkenness, etc., to be a disqualification from holding such office, and points out a mode of determining that fact and executing the consequences by removal by the district judges upon the cause being set forth in writing and its truth found by a jury." Such section was made to keep in order the political order of the state government, by a mode of removing county officers, and not until lately adopted in reference to them. *Id.*

This section in adopting the provision of a former constitution (Art. 5, Secs. 9 and 18 of constitution of 1869) for removal by district judges, adopted the judicial construction put upon the powers of the district judge and is an authoritative adoption of the summary remedy, as it has been acted on by the supreme court in *Gordon v. St.*, 43 T., 338; *Trigg v. St.*, 49 T., 645.

Under this section the leave and sanction of the district court given to a proceedings by a relator, are necessary to the validity; and upon the district court dismissing a petition, filed for that purpose, such action will not be revised on appeal. *Smith v. Brennan*, 49 T., 681.

A county commissioners court has no authority to determine whether a county officer, by changing his residence, has vacated his office; as this section gives the district court power to remove such officers. *Ehlinger v. Rankin*, 29 S. W. R., 240.

A school trustee is an officer, under this section,



and may be removed from office as provided for by law. *Hendricks v. Eckford*, 49 S. W. R., 705.

In a proceedings to remove several officers, they may be joined in the same action. *Eberstadt v. St.*, 45 S. W. R., 1007.

A district clerk failing to remove his office and records from a place, which he in good faith believes to be still the county seat, can not be removed for official misconduct. *St. v. Alcorn*, 78 T., 387, 14 S. W. R., 663.

[Sec. 25, Art. 5, declared adopted September 22, 1891.]

SEC. 25. The supreme court shall have power to make and establish rules of procedure, not inconsistent with the laws of the state, for the government of said court and the other courts of this state, to expedite the dispatch of business therein.

"Power to make rules and regulations" means more than the making of a few short rules as had formerly been made. *Texas Land Co. v. Williams*, 48 T., 602.

Under this section, rule, 82a and 72a of the C. A., (71 T.) govern in criminal as well as civil cases. *Ratcliff v. St.*, 15 S. W. R., 596.

If the principles and usages of the laws are uncertain, the practice could be defined and the proceedings regulated by this court, under this section. *Kleiber v. McManus*, 17 S. W. R., 249, 66 T., 48.

SEC. 26. The state shall have no right of appeal in criminal cases.

SEC. 27. The legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in district courts, over which juris-

diction is given by this constitution to the county courts or other inferior courts, to such county or inferior courts, and for the trial or disposition of all such causes by such county or other inferior courts.

The clause "the transfer of all business, civil and criminal" includes probate matters. *Bowser v. Williams*, 25 S. W. R., 453.

[Sec. 28, Art. 5, declared adopted September 22, 1891.]

SEC. 28. Vacancies in the office of judges of the supreme court, the court of criminal appeals, the court of civil appeals, and district courts, shall be filed by the governor until the next succeeding general election, and vacancies in the office of county judge and justices of the peace shall be filled by the commissioners' court until the next general election of such offices.

This section discussed at length. *Hamilton v. St.*, 51 S. W. R., 219.

A vacancy in the office of the county judge is filled by the commissioners court of the county, until the next general election, and no special judge can be elected. 2 App. C. C., Sec. 707.

[Sec. 29, Art 5, declared adopted September 25, 1883.]

SEC. 29. The county court shall hold at least four terms for both civil and criminal business annually, as may be provided by the legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court, *provided* the com-

missioners court of any county having fixed the times and number of terms of the county court shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the county court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks.

The commissioners court has authority, within limitation expressed in the constitution, to change the time of the regular term of the county court, independent of legislative action. *Hughes v. Doyle*, 91 T., 421, 44 S. W. R., 64.

After this amendment was passed and before legislative action, commissioners courts action was legal. *Ry. Co. v. Grave*, 2 App. C. C., Sec. 677.

This amendment did not become operative until Sept. 23, 1883, and the commissioners court of Milan county had no authority on the third day of Sept., 1883, to change the terms of the county court. 2 App. C. C., Sec. 356.



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ARTICLE VI.

SUFFRAGE.

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## ARTICLE VI.

## SUFFRAGE.

SECTION 1. The following classes of persons not allowed to vote in this state, to-wit:

First—Persons under twenty-one years of age.

Second—Idiots and lunatics.

Third—All paupers supported by any county.

Fourth—All persons convicted of any felony, subject to such exceptions as the legislature may make.

Fifth—All soldiers, marines and seamen employed in the service of the army or navy of the United States.

This section is not a limitation upon the pardoning power of the governor. *Easterwood v. St.*, 31 S. W. R., 296.

[Declared adopted December 18, 1896.]

SEC. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, and shall be deemed a qualified elector.

And every male person of foreign birth subject to none of the foregoing qualifications, who, not less than six months before any election at which he offers to vote, shall have declared his intention to become a citizen of the United States, in accordance with the Federal naturalization laws, and shall have resided in this state one year next preceding such election, and the last six months in the county in which he offers to vote, shall be deemed a qualified elector; and all electors shall vote in the election precinct of their residence. Provided that all electors living in any unorganized county may vote at any election precinct, in the county, to which county is attached for judicial purposes.

Under the section "that electors should vote in the precinct of their residence," which appeared in the clause before it was amended (as well as now): It was held that where votes were cast in different rooms of a court house, with the exception that the room previously used for one precinct was changed to another across the hall, did not invalidate the election. *Ex parte White*, 28 S. W. R., 542.

Where a commissioners court established two voting precincts without reference to wards, it was held that the ignoring of the wards did not invalidate the election. *Davis v. St.*, 75 T., 420, 12 S. W. R., 961.

The county commissioners court disregarded the wards of the City of Hempstead, there being four wards in the city, and divided the city into two wards, adding to each a part of the adjoining country. Held that such action did not render null an election of county officers. *Bell v. Faulkner*, 84 T., 187.

Under the old section, similar to this section, it

was held that a voter must have resided twelve months in the state and six in the county, and must be a resident of the election precinct.<sup>1</sup> *Little v. St.*, 75 T., 616.

SEC. 3. All qualified electors of the state, as herein described, who shall have resided for six months immediately preceding an election within the limits of any city or corporate town, shall have the right to vote for mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; *provided*, that no poll tax for the payment of debts thus incurred shall be levied upon the persons debarred from voting in relation thereto.

The legislature has power to provide for the selection of aldermen, by the qualified voters of the whole or part of any ward, or by the city at large. *State v. McAlester*, 88 T., 285, 31 S. W. R., 187.

Voters in a city election may be restrained to the ward in which they live. *St. v. McAlester*, 88 T., 284, 31 S. W. R., 187; *City of Denison v. Foster*, 90 T., 23, 36 S. W. R., 401.

[Sec. 4. of Art, 6, declared adopted September 22, 1891.]

SEC. 4. In all elections by the people, the vote shall be by ballot, and the legislature shall provide for the numbering of tickets and make such other reg-

ulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box; and the legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more.

This section declaring that all elections to be by ballot, is no restriction on the legislature to provide that the will of the persons, desiring territory to be annexed to municipal corporation, may be ascertained in some other way than by public election, namely; by a petition to the city council. *Graham v. City of Greenville*, 67 T., 63; *St. v. City of Waxahchie*, 81 T., 626.

Laws of 1882, relating to elections in cities, does not prohibit the numbering of ballots, as required by this section. *St. v. Connor*, 23 S. W. R., 1103.

SEC. 5. Voters shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

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ARTICLE VII.

EDUCATION—THE PUBLIC FREE SCHOOLS.

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## ARTICLE VII.

## EDUCATION—THE PUBLIC FREE SCHOOLS.

SEC. 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Towns and cities have no power to levy taxes for school purposes other than those expressly authorized by this constitution, and this section does not give legislature power to direct levy of such taxes as may be necessary in each school district to support free schools. *Ft. Worth v. Davis*, 57 T., 231.

This section and section 3 of this article, authorized the passage of the act of 1893, giving school trustees power to buy school furniture. *McGee v. Franklin Pub. Co.*, 39 S. W. R., 335.

Neither under this section or section 30 of article 16 can the legislature give a four years' term to the office of school trustee created by them. *Kimbrough v. Barnett*, 55 S. W. R., 120.

Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the state out of grants heretofore made or that may

hereafter be made to railroads, or other corporations, of any nature whatsoever; one-half of the public domain of the state; and all sums of money that may come to the state from the sale of any portion of the same, shall constitute a perpetual school fund.

The constitution did not set apart an undivided one-half of the entire public domain to the public school fund. *G. H. & S. A. Ry. Co. v. St.*, 77 T., 367, 12 S. W. R., 988, 13 S. W. R., 619.

The clause "one-half of the public domain" means that it holds beyond legislative control, whatever portion of the public domain remained after the execution of the enumerated purposes. *Id.*

The clause "set apart and appropriated for the support of public schools, and all alternate sections of land reserved by the state out of grants heretofore made or that may hereafter be made to railway companies," means that the school fund is to receive one section and the corporations the others. *Id.*

This section, Sec. 15 of this article, and Sec. 57 of Art. 16, construed. *Id.*

This section does not constitute the relation of trustee on the part of the state. *Smisson v. St.*, 71 T., 222, 9 S. W. R., 112.

The lands belong to the state as fully as they did before they were appropriated to the public purpose by this section. *Id.*

This section does not prohibit the leasing of the school lands. The dedication simply withdraws from the legislature the power to appropriate the lands sold to any other purpose than the public schools. *Id.*

Act of 1883 and contracts under, if for the lease of public school lands, were valid. *Arnold v. St.*, 71 T., 239, 9 S. W. R., 120.

This section left the mode of partition, except to alternate sections granted to corporations, wholly to

the legislative control and did not contemplate a division as a whole. *Hogue v. Baker*, 92 T., 58, 45 S. W. R., 1004.

Where the legislature had permitted the appropriation of one-half of the undivided public domain the remaining one-half belongs equitably to the public school fund, and is not subject to settlement under laws providing for homestead donations. *Id.*

Under this section public land remaining after appropriation or more than one-half of the public domain existing at the time of the adoption of the constitution belongs to the public school fund and the same can be leased by the commissioner. *Hall v. Rushing*, 54 S. W. R., 31.

[Sec. 3, Art. 7, declared adopted September 25, 1883.]

SEC. 3. One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools, and, in addition thereto, there shall be levied and collected an annual *ad valorem* state tax of such an amount, not to exceed twenty cents on the one hundred dollar valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this state for a period of not less than six months in each year; and the legislature may also provide for the formation of school districts within all or any of the counties of this state, by general or special law, without the local notice required

in other cases of special legislation, and may authorize an additional annual *ad valorem* tax to be levied and collected within such school districts for the further maintenance of public free schools and the erection of school buildings therein; *provided*, that two thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts.

The act of 1881, providing that a tax shall be levied if two-thirds of the tax-payers voting shall vote therefor, is constitutional. *Werner v. Galveston*, 72 T., 22, 12 S. W. R., 159, 7 S. W. R., 726, affirmed; *Ft. Worth v. Davis*, 57 T., 225; *Dwyer v. Hockworth*, 57 T., 245.

In a petition of twenty property tax-paying voters residing in the district, asking for an election to determine whether a school tax shall be levied, it is not necessary that the names of the petitioners appear on the last assessment role of the county. *Rhomberg v. McLaren*, 21 S. W. R., 571, 2 C. A., 391.

This section does not prohibit the use of funds, raised one year, in the payment of liabilities created during a previous year. *Culberson v. Bank*, 50 S. W. R., 195.

This section allows election but for two purposes; to supplement the state school fund and for the erection of school buildings. *Land and Cattle Co. v. McCabe*, 72 T., 59, 12 S. W. R., 165.

[Sec. 4, Art. 7, declared adopted September 25, 1883.]

SEC. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the legislature shall not have power to grant any relief to purchasers thereof. The comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the board of education herein provided for, in the bonds of the United States, the State of Texas, or counties in said state, or in such other securities, and under such restrictions as may be prescribed by law; and the state shall be responsible for all investments.

The act of February, 1885, extending the time of forfeiture of lands for non-payment of interest from March to August, is valid. *Barker v. Torrey*, 69 T., 7, 4 S. W. R., 646.

This section is mandatory and leaves no discretion in the legislature as to the mode in which the lands shall be ultimately utilized. *Smission v. State*, 71 T., 222, 9 S. W. R., 112.

That the lands are to be sold does not prohibit the temporary leasing of the lands until the sale is made. *Id. Falls Co. v. Delaney*, 73 T., 463, 11 S. W. R., 492.

A lease without the right to sell is unconstitutional. *Id.*

The state cannot be required to return the money paid on school lands sales, when suit is brought to rescind the sale. *St. v. Sydnor*, 66 T., 687.

The state will shield and protect the honest purchaser of its lands, though he may have made a mistake in the description thereof. *Flanagan v. Nashworthy*, 20 S. W. R., 839, 1 C. A., 470.

This section commands the lands to be sold, but leaves it to the legislature, as to when they shall be sold. *Swenson vs. Taylor*, 80 T., 584, 16 S. W. R., 336.

The act of 1887, withdrawing from sale, grazing lands, leased for five years, until the expiration of the term, is constitutional. *Brown v. Shiner*, 84 T., 509, 19 S. W. R., 687.

Laws of 1897, validating sale of isolated sections of public lands, do not violate this section. *Keutyman v. Blackwell*, 51 S. W. R., 659.

Act of 1885, declaring that failure to pay interest on the price of school lands, after it is due, does not forfeit the rights of the purchaser, is constitutional. *Capps v. Garvey*, 41 S. W. R., 379.

Laws of 1889 giving validity to certain contracts of the land board, in the sale of free school lands, does not give relief to purchasers, and is constitutional. *Flannagan v. Nashworthy*, 20 S. W. R., 839, 1 C. A., 470.

The public school lands can only be sold under such regulations and on such terms as may be prescribed by law. *Chancey vs. St.*, 84 T., 529, 19 S. W. R., 706.

Act of 1897, authorizing the commissioner of the land office to declare school lands, purchased from the state, forfeited, when the interest is not paid, is not granting relief to purchasers of school lands. *Standifer v. Wilson*, 54 S. W. R., 899.

[Sec. 5, Art. 7, declared adopted September 22, 1891.]

SEC. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and



levied shall be the available school fund, to which the legislature may add not exceeding one per cent annually of the total value of the permanent school fund; such value to be ascertained by the board of education until otherwise provided by law; and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted, appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof, ever be appropriated to, or used for the support of, any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

A county treasurer can not enforce a demand on the state comptroller for a warrant for the payment of his county's proportion of the school fund. *Jernigan v. Finley*, 90 T., 205, 38 S. W. R., 25.

There is no authority in a school board to apply school funds to any other purpose. *Usery v. Laredo*, 65 T., 406.

A teacher of private school is not entitled to pay out of public funds. And for a school to be a public one, the method by which public schools may be created must be pursued. *Id.*

[Sec. 6, Art. 7, declared adopted September 25, 1883.]

SEC. 6. All lands heretofore or hereafter granted to the several counties of this state for educational pur-

poses are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the commissioners' court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein, said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said state, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal, shall be available fund.

A purchase of lands by the county judge to be paid for out of the permanent school fund, without an order of the commissioners' court, may be ratified by the commissioners' court. *Boydston v. Rockwall County*, 86 T., 234, 24 S. W. R., 272.

The commissioners' court have authority to invest the money received from the sale of county school lands in county bonds. *Id.*

It is contemplated by this section that the counties should have the power to derive a revenue from their lands by lease, without selling them. *Falls County v. De Laney*, 73 T., 463, 11 S. W. R., 492.

This section applies to future settlers as well as those residing upon the lands at the time the constitution was adopted. *Baker v. Dunning*, 77 T., 28, 13 S. W. R., 617, 2 C. A., 341-345.

This section regulating the school lands is not destructive of the rights of ownership in the counties. *Id.*

An actual settler upon land is one who has actually established his residence upon it, and not one who has inclosed it and cultivated it, intending at some future time to live upon it. *Baker v. Millman*, 77 T., 46, 13 S. W. R., 618; *Baker v. Millman*, 21 S. W., 297.

The benefits of this section is confined to those who come within the literal meaning of the terms "actual settlers." *Id.*

The word "settlement," as used in this section, does not limit the right of purchasers to the amount actually improved, but embraces any amount of land within the limit prescribed. *Perkins v. Miller*, 60 T., 61.

The applicant to buy must be himself a settler on the land to be within the constitutional protection. And one is not an actual settler who claims under another who had resided on the land. *Id.*

County school lands are held for the benefit of the public schools, and can not be deeded to a surveyor for services in surveying them. *Pulliam v. Runnels County*, 79 T. 363, 15, S. W. R., 277.

This entire section means that all of the lands or their proceeds were to be held by the counties in trust for the support of the public schools, and that no part was to be diverted to any other purpose. *Id.*

It was the intention of the state to vest the right of property in the county school lands in the several counties respectively. *Milam County v. Bateman*, 54 T., 153.

Under the right to dispose of the school lands in

such manner as may be provided for by law, the commissioners' court can release the liability of purchasers, to whom they sold school lands, taking vendor's lien note for the same, and take in lieu thereof the note of another party for the amount secured by trust deed on the land. *Waggner v. Wise County*, 43 S. W. R., 836, 17 C. A., 220.

This section does not prevent the county from leasing its school lands for a fixed annual rent. *McInnes v. Wallace*, 38 S. W. R., 816.

Under this section and R. S. 1895, Art. 4272, before a settler can be barred of his right to buy the land it must be offered to him in good faith and rejected by him. The mere fact that he knew the land was for sale is not sufficient. *Carrington v. Harris*, 50 S. W. R., 197; *Baker v. Dunning*, 77 T., 28, 13 S. W. R., 617; *Peregan v. White*, 77 T., 196, 13 S. W. R., 974.

Right of purchase applies to future settlers as well as those settling at the time of the constitution. *Baker v. Dunning*, 77 T., 28, 13 S. W. R., 617.

Not until the terms of purchase are fixed and complied with, does the constitution vest title in the settler. *Land and Cattle Co. v. Wood*, 71 T., 460.

Settlers must be settlers in good faith. *Falls County v. Delaney*, 73 T., 463, 11 S. W. R., 492.

This section is not a restriction of the powers of the court over the investment of the school fund. *Cattle Co. v. Bruce*, 78 T., 269, 14 S. W. R., 619; *Boydston v. Rockwall Co.*, 86 T., 234, 24 S. W. R., 272.

If part of the consideration of the sale is other than money, the sale is invalid. *Tomplinson v. Hopkins Co.*, 57 T., 572.

The constitution vests the title of the school lands in the counties. *Palo Pinto County v. Gano*, 60 T., 249.

A married man in possession of county school lands, at the time of its sale, is an actual settler and is entitled to the prior right of purchase under this section. And the fact that he had agreed to assign this right before the sale does not affect it. *Best v. Baker*,

22 S. W. R., 1067; Baker v. Millman, 21 S. W. R., 297.

This right is not confined to settlers who have no land. Id. Baker v. Burroughs, 21 S. W. R., 295.

This section discussed Ward v. Worsham, 24 S. W. R., 843 (Baker v. Dunning, 77 T., 28, 13 S. W. R., 617, followed).

See where the terms for the sale of school lands, fixed by the county court under this section, gave defendant best claim. Land and Cattle Co. v. Earle, 12 S. W. R., 66.

SEC. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

SEC. 8. The governor, comptroller and secretary of state shall constitute a board of education, who shall distribute said funds to the several counties and perform such other duties concerning public schools as may be prescribed by law.

#### ASYLUMS.

SEC. 9. All lands heretofore granted for the benefit of the lunatic, blind, deaf and dumb, and orphan asylums, together with donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said asylums. And the legislature may provide for the sale of the lands and the

investment of the proceeds in manner as provided for the sale and investment of school lands in section four of this article.

#### UNIVERSITY.

SEC. 10. The legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this state and styled "The University of Texas," for the promotion of literature and the arts and sciences, including an agricultural and mechanical department.

SEC. 11. In order to enable the legislature to perform the duties set forth in the foregoing section, it is hereby declared that all lands and other property heretofore set apart and appropriated for the establishment and maintenance of "The University of Texas," together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the state (together with such sum belonging to the fund as may now be in the treasury), shall be invested in bonds of the State of Texas, if the same



can be obtained; if not, then in United States bonds; and the interest accruing thereon shall be subject to appropriation by the legislature to accomplish the purpose declared in the foregoing section; *provided*, that the one-tenth of the alternate sections of the lands granted to railroads, reserved by the state, which were set apart and appropriated to the establishment of "The University of Texas," by an act of the legislature of February 11, 1858, entitled "An Act to establish 'The University of Texas,' " shall not be included in or constitute a part of the permanent university fund.

SEC. 12. The land herein set apart to the university fund shall be sold under such regulations, at such times and on such terms as may be provided by law; and the legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

SEC. 13. The Agricultural and Mechanical College of Texas, established by an act of the legislature, passed April 17, 1871, located in the county of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the me-

chanic arts and the natural sciences connected therewith. And the legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said college in immediate and successful operation.

SEC. 14. The legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the state, to be located by a vote of the people; *provided*, that no tax shall be levied and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

SEC. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated for the endowment, maintenance and support of said university and its branches, one million acres of the unapportioned public domain of the state, to be designated and surveyed, as may be provided by law; and said land shall be sold under the same regulations and the proceeds invested in the same manner as is provided for the sale and investment of the permanent university fund; and the legislature shall not have power to grant any relief to the purchasers of said lands.

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ARTICLE VIII.

TAXATION AND REVENUE.

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## ARTICLE VIII.

## TAXATION AND REVENUE.

SEC. 1. Taxation shall be equal and uniform. All property in this state, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this state. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *provided*, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this state, shall be exempt from taxation, *and provided further*, that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business shall not exceed one-half of the tax levied by the state for the same period on such profession or business.

Act of 1881, compelling the payment of tax for

selling liquors is constitutional. *Fabey v. St.*, 27 Cr. App., 146; *Floeck v. St.*, 34 Cr. App., 314; *Harris County v. St.*, 4 Cr. App., 131; *Tonells v. St.*, 4 Cr. App., 325.

One county may levy a larger county tax upon one occupation than is levied on the same occupation by other counties. *Id.*

This section, together with section 2 of this article, does not necessitate equality and uniformity between different classes of occupations nor require upon every class the same precedent to their lawful pursuit. *Id.*

It is only when individuals of a class are signaled out that the tax is not equal and uniform. *Thompson v. St.*, 17 Cr. App., 253.

The word "occupation" under the constitution of 1866, was held to import some profitable pursuit. *Forde v. Bennman*, 31 T., 277.

The occupation tax on lawyers is constitutional. *Ex parte Williams*, 31 Cr. App., 263, 20 S. W. R., 580.

A law is constitutional if it taxes all professions alike. *Id.*

This section empowers the legislature to make it a penal offense for any person, subject to the tax, to pursue the occupation without first paying the tax imposed. *Languille v. St.*, 4 Cr. App., 313.

The taxing power of the legislature is not limited to subjects and objects specified in this section, providing that all property shall be taxed *ad valorem*. Dogs are not property in this sense. *Ex parte Cooper*, 3 Cr. App., 489.

A special tax for local benefit, levied by a city, does not come within the meaning of the term "taxation" as used in this section. *Harris County v. Boyd*, 70 T., 237.

Act of the twenty-fifth legislature declaring in what way Jeff Davis county should pay its pro rata share of indebtedness of its parent county, does not violate this section. *Presidio County v. Jeff Davis County*, 35 S. W. R., 177.



The legislature must impose a tax for the benefit of the state before a municipal corporation can tax it. *Hoefling v. City of San Antonio*, 85 T., 228, 20 S. W. R., 85.

The sum a city can tax on an occupation cannot exceed one-half the tax levied by the state. *Id.*

A city cannot impose a license on an occupation or business until the legislature has declared that such occupation or business shall be taxed and has fixed the amount of tax. *City of Laredo v. Lowery*, 20 S. W. R., 89. (*Hirshfield v. Dallas*, 29 Cr. App., 242, 15 S. W. R., 124. Overruled).

The purpose of this section is to deny municipalities the unrestricted power to tax any occupation. *Id.*

An ordinance of a city imposing a tax on vehicles kept for public use, not taxed by the state, is void. *Ex parte Terrell*, 48 S. W. R., 504.

The measure a municipal corporation may tax an occupation is dependent on the sum the state may levy on the same occupation, and R. S., 1895, provided that municipalities shall have power to levy and collect taxes on trades, etc., in so far as it authorizes taxation on occupations not taxed by the state, violates this section. *Id.*

Act of the twenty-fifth legislature, giving a merchant the right to peddle anywhere in his county by paying less than \$350 peddler's license, and imposing the \$350 license upon peddlers for pursuing the same, violates this section. *Ex parte Overstreet*, 46 S. W. R., 824.

The provision "taxation shall be equal and uniform" does not apply to local assessments for street improvements. *Taylor v. Boyd*, 63 T., 534; *Roundtree*, 42 T., 613; *Allen v. Galveston*, 51 T., 320.

Occupation tax may be levied on companies existing outside of the state but pursuing an occupation within the state. *Western Union Tel. Co. v. St.*, 55 T., 314.

This section gives the legislature power to impose a poll tax. *Perry v. City of Rockdale*, 62 T., 453.

A city cannot exempt from taxation property of a company, in consideration of the company furnishing the city water at a reduced rate. *Altgeld v. San Antonio*, 17 S. W. R., 75; *Austin v. Gas Co.*, 69 T., 187, 7 S. W. R., 200.

SEC. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes (and the necessary future of all schools), and institutions of purely public charity; and all laws exempting property from taxation, other than the property above mentioned, shall be void.

A city ordinance authorized council to impose a tax on individuals having stalls for selling meat. The tax was collected only on butchers selling meat at private stalls, but not from butchers renting stalls from city. Ordinance held to be unconstitutional. *Hoefling v. City of San Antonio*, 85 T., 229, 20 S. W. R., 86.

This section is as binding in cases of occupation taxes levied by the municipality as well as the state. And the prohibition of unequal taxes applies to collections as well as to the levy. *Id.*

Institutions means all buildings used exclusively and owned by institutions of purely public character. And a Masonic temple, the third story of which is used by the Masonic order, the two lower stories rented, the

proceeds of which are appropriated to the purpose of charities, is not exempt from taxation. *Morris v. Loan Star Chapter of Masons*, 68 T., 598, 5 S. W. R., 519.

This section does not exempt property, it authorizes the legislature to. And public property applies to property owned by the state or one of its municipal divisions. *St. Edwards College v. Morris*, 82 T., 1, 17 S. W. R., 512.

Exemption of buildings used for school purposes includes the lots upon which they are placed, but does not include land used as a farm in connection with the buildings. *Id.*

The power to commute taxes is but an incident to the power to exempt. When the power to exempt does not exist, the power to commute can not be exercised. *Austin v. Gas Co.*, 69 T., 180, 7 S. W. R., 200.

The assumption on part of a city to exempt property is void. *Id.*

The action of the city of Houston in assessing a tax against a court house and in attempting to bind the county is violative of this section. *Harris County v. Boyd*, 70 T., 237, 7 S. W. R., 713.

A house owned by a practicing attorney, in which he lives with his wife, she conducting a school in it, is not exempt from taxation. *Edmonds v. City of San Antonio*, 36 S. W. R., 495.

This section enumerating certain property exempt from taxation can not be construed to embrace all property not specified for taxation. *Galveston Wharf Co. v. Galveston*, 63 T., 14.

Act of 1881, imposing a tax of two dollars per mile on every firm or person running palace cars owned by the railroad companies in the state, is not a tax on property which must be taxed according to its value. Nor is it a tax on persons which must be uniform on the same class of subjects. It is an occupation tax. *Pullman Palace Car Co.*, 64 T., 275.

A tax imposed on one running a sleeping car over the railroad of another, when the same law exempts

from taxation, the act of running same kind of cars over the road of the car owner violates this section. *Id.*

The twenty-fifth section of the occupation tax law of the twenty-fifth legislature violates this section, because it exempts deaf, dumb and wounded soldiers. *Ex parte Jones*, 38 Cr. App., 482, 43 S. W. R., 513.

Act of the twenty-fifth legislature, imposing an occupation tax on cotton buyers, but exempting such as pay an occupation tax as merchants, violates this section. *Poteet v. St.*, 53 S. W. R., 869.

The occupation tax law of the twenty-fifth legislature, which allowed a merchant to become a cotton buyer on payment of a less tax than required of other cotton buyers, violates this section. *Bainey v. St.*, 53 S. W. R., 882.

The occupation tax law of the twenty-fifth legislature, requiring peddlers to pay specified taxes and exempting ex-soldiers and other enumerated classes of persons from the payment of such tax for peddling, violates this section and section two of this article. *Ex parte Jones*, 43 S. W. R., 513.

SEC. 3. Taxes shall be levied and collected by general laws and for public purposes only.

Appropriating the dog tax to the county free school fund does not violate this section. The power to increase the school fund from other sources than the general revenue and poll-tax is not limited by this section. *Ex parte Cooper*, 3 Cr. App., 489.

Laws of 1891, providing for the payment out of the county treasury of bounties for the destruction of wolves, does not violate this section. *Weaver v. Scurry Co.*, 28 S. W. R., 836.

SEC. 4. The power to tax corporations and corporate property shall not be surrendered or suspended by

act of the legislature, by any contract or grant to which the state shall be a party.

SEC. 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this state, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

A board of appeal created by a city charter, to hear grievances as to assessments, made by the assessor, has no power to add a franchise of a railway company to the lists of property, on account of the company's and the assessor's failure to list it. *S. A. St. Ry. Co. v. City of San Antonio*, 54 S. W. R., 907.

SEC. 6. No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first legislature to assemble under this constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth legislature.

R. S. Art. 1012 creating the office of stenographer

and fixing his salary, does not authorize the comptroller to issue a warrant for the money, unless an appropriation is made by the legislature, as is required by this section. *Pickle v. Finley*, 91 T., 484, 44 S. W. R., 480.

A law fixing a salary for an indefinite time, will not be construed to be an appropriation, when that construction will violate this section. *Id.*

SEC. 7. The legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the treasury; and shall make it penal for any person or persons to borrow, withhold, or in any manner to divert from its purpose, any special fund or any part thereof.

SEC. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the road-bed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.



[Sec. 9, Art. 8, declared adopted December 19, 1890.]

SEC. 9. The state tax on property, exclusive of the tax necessary to pay the public debt and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, water-works, and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this constitution otherwise provided; and the legislature may also authorize an additional annual *ad valorem* tax to be levied and collected for the further maintenance of the public roads; *provided*, that a majority of the qualified property tax paying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws.

The legislature, subject to the constitutional provision, has authority to grant power to a county to issue bonds for the construction of bridges, court house or jail, and to make provision for the taxes, to pay the interest and create the sinking fund required. *Mitchell County v. Bank*, 91 T., 361, 43 S. W. R., 880.

This section and sections 2 and 7 of Art. II are self-executing. *Id.*

Amount of indebtedness counties and cities are authorized to create for the erection of public buildings is limited to twenty-five cents upon \$100 worth of property, as shown by the assessment roll of the municipality. *Bank v. Terrell*, 78 T., 450, 14 S. W. R., 1003.

Bonds which require more than twenty-five cents on the \$100 valuation are void. They are valid up to that amount. *Id.*

The word "valuation" means the value as fixed by competent authority for the purpose of taxation. *Id.*

Bonds issued for real indebtedness and in excess of the amount the county could legally issue are valid to the extent of indebtedness the county could create and are void to all above that. *Nolan County v. St.*, 83 T., 182, 17 S. W. R., 823.

"Erections" means repairs and additions to buildings as well as the original construction. *Brown v. Graham*, 58 T., 254.

This section has reference to taxation for erection of public buildings and not to taxation to pay debts, contracted for before the constitution was adopted. *Dean v. Lufkin*, 54 T., 265; *Bagly v. Bateman*, 50 T., 446.

Inasmuch as Art. 11, Sec. 2, does not prohibit what Art. 8, Sec. 9 authorizes, this latter section is merely cumulative of the former. *Smith v. Grayson Co.*, 44 S. W. R., 920.

This section controls Sec. 57, Art. 3, and the legislature may pass local laws for the maintenance of pub-

lic roads without local notice required by Sec. 57 of Art. 3. *Id.*

This section cannot be evaded by making an unnecessary levy for public buildings and other permanent improvements, authorized by this section, with intent to transfer the levy, when collected, to the fund for county purposes, which has already been swelled to its constitutional limit. *Jefferson Iron Co. v. Hart*, 44 S. W. R., 321.

See what the policy of the state in reference to issuance of bonds to raise money for the building of a court house was before the adoption of the constitution. *Robertson v. Breedlove*, 61 T., 316; *Loonie v. Galveston*, 54 T., 517.

The amendment of 1883 did not confer on counties power to issue bonds redeemable at fixed periods, to borrow money for the building of a court house. *Robertson v. Breedlove*, 61 T., 316.

Under the amendment of 1883, cities of 10,000 inhabitants were exempt from the maximum limit prescribed for municipal governments as a class, and they could levy *ad valorem* taxes to the extent of two and one-half per cent on the \$100 valuation, when authorized by the legislature. *Lufkin v. Galveston*, 63 T., 437.

The City of Galveston had authority to levy an annual tax of seven per cent on the \$100 valuation, to provide for an emergency fund. *Id.*

This section protects the inhabitants of municipalities against oppressive taxes. *Terrell v. Dessaint*, 9 S. W. R., 594.

See where this section in connection with Art. 16, Sec. 50, in reference to assessments discussed and construed. *Higgins v. Bordages*, 31 S. W. R., 53, 31 S. W. R., 803.

The purpose of this section discussed. *Sandmeyer v. Harris*, 27 S. W. R., 284; *Gas Co. v. Cleburne*, 212 S. W. R., 393.

SEC. 10. The legislature shall have no power to release the inhabitants of, or property in, any county, city or town, from the payment of taxes levied for state or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each house of the legislature.

SEC. 11. All property, whether owned by persons or corporations, shall be assessed for taxation and the taxes paid in the county where situated, but the legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the comptroller of public accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

This section and Sec. 12 of this Art. does not prevent the county, upon its subsequent organization, from collecting the taxes, where the same have not been actually paid the comptroller and the organization is affected prior to the first of June of that year. *Cattle Co. v. Love*, 21 S. W. R., 575.

A "proper officer" authorized by this Sec. to make assessments was by the charter of San Antonio, the city assessor and not the board of revision. *San Antonio St. Ry. Co. v. City of San Antonio*, 54 S. W. R., 907.

SEC. 12. All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed and the taxes thereon collected at the office of the comptroller of the state.

Construing this section and section 11 of this Art., held that the collection of taxes on personality of a resident of an unorganized county may be made by the collector of the organized county. *Llano County v. Faught*, 5 S. W. R., 494.

There is not a constitutional provision as to the place, where taxes on personal property in an unorganized county and owned by a non-resident thereof, shall be collected and assessed. *Id.*

SEC. 13. Provision shall be made by the first legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of all lands and other property upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; *provided*,

that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land.

A judgment under R. S., title 104, ordering a sale in gross of several tracts of land, proceeded against in foreclosure of tax lien, is not unconstitutional. *Masterson v. St.*, 42 S. W. R., 1003.

This section does not secure a right to redeem land sold by decree of court, in suits for the enforcement of taxes. *San Antonio v. Berry*, 92 T., 320, 48 S. W. R., 497.

The right of redemption secured to the owner, by this section, applies to only "speedy sale," for which the legislature was required to make provision. *Id.*

This section only states the object of the deed, when the law has been complied with. *Meredith v. Coker*, 65 T., 31.

SEC. 14. There shall be elected by the qualified electors of each county, at the same time and under the same law regulating the election of state and county officers, an assessor of taxes, who shall hold his office for two years and until his successor is elected and qualified.

SEC. 15. The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent tax-payer shall be liable to seizure and sale for the payment of all the taxes and penalties due by



such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the legislature may provide.

A city incorporated under the general laws has a right to maintain a suit to recover a personal judgment for ad valorem taxes due, and to foreclose lien upon particular property upon which the tax is assessed. *City of Henrietta v. Eustis*, 87 T., 14, 26 S. W. R., 619; *Cave v. City of Houston*, 65 T., 619; *Lufkin v. Galveston*, 73 T., 343.

This section makes all property, both real and personal, subject to seizure and sale for the payment of all taxes and penalties due by the delinquent taxed person. *Wynne v. Simmons Hardware Co.*, 1 S. W. R., 571.

SEC. 16. The sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having ten thousand inhabitants, to be determined by the last preceding census of the United States, a collector of taxes shall be elected, to hold office for two years and until his successor shall be elected and qualified.

In determining whether sheriff was under this section, also ex officio collector of taxes, the list of the enumerator taking the last census for the county, if duly certified and filed in the office of the county clerk, prior to his election, will govern whether or not the county has ten thousand inhabitants. *Nelson v. Edwards*, 55 T., 389.

SEC. 17. The specification of the objects and subjects of taxation shall not deprive the legislature of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this constitution.

SEC. 18. The legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the county commissioners' court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

This section making county commissioners court a board of equalization, applies to state and county taxes and not to city taxes. *Scolbard v. City of Dallas*, 42 S. W. R., 640.

(Sec. 19, Art. 8, declared adopted Oct. 14, 1879).

SEC. 19. Farm products in the hands of the producer and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the legislature.

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ARTICLE IX.

COUNTIES.

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## ARTICLE IX.

## COUNTIES.

SECTION 1. The legislature shall have power to create counties for the convenience of the people, subject to the following provisions:

First: In the territory of the state exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the state lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

The legislature has power to establish new counties. *State v. Cook*, 78 T., 406, 14 S. W. R., 996.

A commissioners court has no authority to declare an unorganized county attached to an organized county for judicial purposes, a school district. *Rhomberg v. McLaren*, 21 S. W. R., 571.

Second: Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing of the county from which it was taken, in such manner as may be prescribed by law.

This section is subordinate to Art. 8, Sec. 1, and an act creating Mills county and fixing its liability, according to the amount of territory, and ignoring the taxable value of the property, is unconstitutional. *Mills County v. Brown County*, 85 T., 392, 20 S. W. R., 81.

The taxable value of the property in the territory taken off, in its relation to the taxable value of the property in the territory left in the parent county,



should be the criterion by which the indebtedness between the two counties should be apportioned. Id.

The part of this section prescribing the liabilities of detached counties to the present counties is definite and leaves no room for construction. The term "all the liabilities" precludes the idea that any adjustment or abatement between the two counties could be allowed and the legislature has no right to authorize new counties, credit for their proportionate share of the public property, belonging to the present county. *Mills County v. Brown County*, 87 T., 475.

A two-thirds vote of each house of the legislature is not required to enact a law prescribing the manner by which the liabilities of a new county, for its pro rata share of the debts of the old county, is to be enforced. Id.

For a discussion of facts involving the liability of detached counties to their mother county. See *Brewster Co. v. Presidio Co.*, 48 S. W. R., 213; *Mills Co. v. Lampassas Co.*, 40 S. W. R., 403, 90 T., 303.

See where bonds, in the hands of a bona fide purchaser, was a debt against the parent county and rendered it liable under this section. *Jeff Davis County v. City National Bank of Paducah*, 54 S. W. R., 39; *Presidio County v. City National Bank of Paducah*, 44 S. W. R., 1069.

Third: No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

## COUNTY SEATS.

SEC. 2. The legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical center of the county shall be removed except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center, in either case the center to be determined by a certificate from the commissioner of the general land office.

See where Miani did not receive two-thirds of the votes cast for the county seat, and being situated more than five miles from the center of said county, it was not the lawfully elected county seat. *St. v. Alcorn*, 14 S. W. R., 663.

A county seat situated within five miles from the geographical center of a county, can not be removed to a point more than five miles from the geographical center, except by a two-thirds vote of the voters on the subject. *Caruthers v. St.*, 2 S. W. R., 91, 67 T., 139.

See where there was an inference that a county seat had been legally established. *Id.*

This section relates to the removal of county seats once established and not to be the location of a county seat upon the organization of a new county. *Ex parte Whitlow*, 59 T., 273.

This section places no limitation upon removals of county seats, except that no county seat, within five miles of the geographical center, shall be removed except by two-thirds of the voters. *Presidio County v. City National Bank*, 44 S. W. R., 1069.

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ARTICLE X.

RAILROADS.

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## ARTICLE X.

## RAILROADS.

SECTION 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

A railroad company has the right to condemn the right of way of another, when necessary to cross it, for the purpose of making connection with a third road, although the first and last road do not intersect. *Sabine Ry. Co. v. C. G. & S. F.*, 46 S. W. R., 784. *S.C. 92 Tex. 162*

A railroad has no right to condemn the property of another which has already been dedicated to public use, where such taking will destroy the first use, unless the new use cannot be accomplished any other way. *Id.*

The regulations to be prescribed by law, to carry out the provisions of this section, extends only to such matters as are embraced in the act imposing forfeitures

upon railway companies failing to erect depots etc. Ry. Co. v. St., 79 T., 265, 14 S. W. R., 1063.

Laws of 1889, requiring depots at railway crossings, are constitutional. Id.

Law making common carriers liable as a connecting line, is authorized by this section. T. & P. Ry. Co. v. Bigham, 47 S. W. R., 814.

[Sec. 2, Art. 10, declared adopted December 19, 1890.]

SEC. 2. Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies common carriers. The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties and to the further accomplishments of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

The power to correct abuses in rates is not restricted to such as are connected with passenger tariffs. And the railway company has power to regulate the shipping of cotton. Ry. Co. v. Hand T. C., 90 T., 340, 38 S. W. R., 750.

The commissioner's power to correct abuses extends only to such abuses as are defined by law and does not authorize the commission to declare what is an abuse. Id.



This section is not a limitation on the powers of the legislature but rather commands them to pass such laws as are necessary to carry out this section. *Ry. Co. v. State*, 79 T., 264, 14 S. W. R., 1063.

If the matter remedied was an abuse of the duty on the part of the railroad companies, the legislation may be classed with the provisions of this section. *Id.*

This section, imposing certain legislation touching railroads, did not forbid legislation upon other subjects touching railroads. *Id.*

The railroad commission has a right to limit the amount of traffic charges but cannot enforce unjust and unreasonable rates. *Regan v. Trust Co.*, 154 U. S., 362-420, 38 Book 1014; *Regan v. Mercantile Trust Co.*, 154 U. S., 413-418, 38 Book 1028-1030.

This section leaves it to the legislature to determine what railroad acts are abuses, and what penalties are necessary to correct them. *H. & T. C. v. Harry*, 63 T., 257.

This section refers to all injuries to the public, arising out of violation of duties due by the railroad company to the public as a common carrier. *S. A. & P. Ry. Co. v. Wilson*, 19 S. W. R., 911.

This section prevents railway companies from withholding privileges and preferences from one customer which are not extended to all others. *H. & T. C. Ry. Co. v. Rust*, 58 T., 99.

A discrimination is just and reasonable where a rate of freight is reasonable for all customers and contracts for less rate might be made. *Id.*

This section declaring "all railroads public highways" and all railroad companies "common carriers," prohibits a railroad company from exempting itself from liability, for damages, occasioned by its own negligence or that of its servant. *Ft. Worth Ry. Co. v. Rogers*, 53 S. W. R., 366.

SEC. 3. Every railroad or other corporation, or-

ganized or doing business in this state under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residents of its officers. The directors of every railroad company shall hold one meeting annually in this state, public notice of which shall be given thirty days previously, and the president or superintendant shall report annually, under oath, to the comptroller or governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The legislature shall pass laws enforcing by suitable penalties, the provisions of this section.

SEC. 4 The rolling stock and all other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and its real and personal property, or any part thereof,

shall be liable to execution and sale in the same manner as the property of individuals; and the legislature shall pass no laws exempting any such property from execution and sale.

A constable can lawfully refuse to first levy on a box car, pointed out to him by the defendant, before levying on the depot grounds. *Texas Mexican Ry. Co. v. Wright*, 88 T., 346, 31 S. W. R. 613.

SEC. 5 No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works of franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Where railroad companies are chartered by the state and two or more of them are parallel or competing lines and they combine with roads not under state control, they are still subject to this section. *G. C. & S. Fee Ry. Co. v. St.*, 72 T., 404, 10 S. W. R., 81.

An agreement forming an association between railroad companys, for the purpose of preventing extreme changes in traffic, to control freight etc., the same to be managed by a committee, violates this section. *Id.*

As long as one company remains a member of the other, it is under its control. *Id.*

This section is a restriction on the power of a railroad company and is not a grant of power to a railroad to lease. *Ry. Co. v. Morris*, 68 T., 49, 3 S. W. R., 457.

The M. K. & T. had no right to purchase the East Line Red River Co. *East Line River Co. v. Rushing*, 69 T., 307, 6 S. W. R., 834.

Courts may take judicial knowledge of the fact, whether railroads are connecting or parallel or not, but not whether they are competing. *Id.*

The fact that roads cross each other does not necessarily prove that they are competing. Whether they are or not is for the jury to determine. *Id.*

A railroad by its relation to other roads may be a competing line with a road, with which it is not parallel nor connected with, within the meaning of this section. *East Line Red River Company v. St.*, 75 T., 434, 12 S. W. R., 690.

SEC. 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other state or of the United States.

The sale of the East Line Red River Co. to the M. K. & T., the latter a corporation incorporated under the laws of Kansas and Missouri, violates this section. *East Line Red River Co. v. State*, 75 T., 434, 12 S. W. R., 690.

SEC. 7. No law shall be passed by the legislature granting the right to construct and operate a street rail-

road within any city, town or village, or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

While this section is prohibitory and not permissive, it is a clear recognition of the right of any city to give its consent to the use of its streets by railway companies and contains no limitation of the length of time for which such consent may be given. *Mayor of Houston v. Houston Ry. Co.*, 83 T., 548, 19 S. W. R., 127.

This section, by implication, recognizes the right of a municipality to grant a street railway company franchises subject to the limitation expressed in it. *Houston v. Houston Ry. Co.*, 83 T., 548, *Taylor v. Dunn*, 80 T., 652, 16 S. W. R., 732.

The person who contracted to build the state capitol had no right, without consent of the municipal authorities, to lay and operate a steam railway in the streets to haul material, although the railroad was a necessity. *Taylor v. Dunn*, 16 S. W. R., 732, 80 T, 652.

SEC. 8. No railroad corporation in existence, at the time of the adoption of this constitution, shall have the benefit of any future legislation except on condition of complete acceptance of all the provisions of this constitution applicable to railroads.

Under this section an admission by a company in its pleadings that it is subject to the laws and constitution in force, is an admission of the acceptance of the benefits of subsequent legislation, such as subjects it to Art. 10, Sec. 6. *East Line Red River Co. v. St.*, 12 S. W. R., 690, 75 T. 434.

SEC. 9. No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

This section does not make it the duty of a town, to make the grant of way and depot grounds. *Cleburne v. G. C. & S. F.*, 66 T., 457, 1 S. W. R., 342.



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ARTICLE XI.

MUNICIPAL CORPORATIONS.

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## ARTICLE XI.

## MUNICIPAL CORPORATIONS.

SECTION 1. The several counties of this state are hereby recognized as legal sub-divisions of the state.

SEC. 2 The construction of jails, court-houses and bridges, and the establishment of county poor-houses and farms, and the laying out, construction and repairing of county roads, shall be provided for by general laws.

See *Mitchell County v. Bank*, 91 T., 361, 43 S. W. R., 880, (under Art. 11, Sec. 5).

Where bonds for building a court house were issued redeemable at a fixed period, in the absence of legislation, authorizing it, an injunction was the proper method to stop it. *Breedlove v. Robertson*, 61 T. 316, (*Lunie v. Galveston*, 54 T., 517, distinguished).

In the absence of legislation a county has no implied power to issue bonds for the building of a court house. *Id.*

SEC. 3. No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in

any wise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

This section prohibits a city from appropriating its revenue or using its credit to obtain right of way and depot grounds for a railroad commission. And this section is not modified by Art. 10, Sec. 9. *Cleburne v. G. C. & S. Fee*, 66 T., 457, 1 S. W. R., 342.

An agreement of a city to refund the money paid out by a railway company for right of way and depot grounds is an appropriation prohibited by this section. *Id.*

A contract between a city and individuals who bind themselves, to be afterwards incorporated, and which provides for an extension of such credit, to the proposed corporation, is prohibited by this section. *Cleburne v. Brown*, 73 T., 443, 11 S. W. R., 404.

SEC. 4. Cities and towns having a population of ten thousand inhabitants or less, may be chartered alone by general law. They may levy, assess and collect an annual tax to defray the current expenses of their local government, but such tax shall never exceed, for any one year, one-fourth of one per cent, and shall be collectable only in current money. And all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities and towns, shall be collectable only in current money.

Annual tax here used means an ad valorem tax and is not a denial of power to collect other classes of taxes. *Perry v. Rockdale*, 62 T., 454.

The sum for which bonds may be issued is the sum

which together with interest at the given rate could be liquidated by the annual stated payments. *Russell v. Cage*, 66 T., 428, 1 S. W. R., 270.

The legislature has no power to authorize a city under 10,000 inhabitants to levy a special tax to pay the bonds or coupons, when she has already levied one-fourth of one per cent for current expenses. *Gould v. City of Paris*, 68 T., 512, 4 S. W. R., 650.

The power of a city of 10,000 inhabitants or less to create a debt is limited to a sum, the interest and two per cent of the principal, which can be paid out of a levy of 25 cents on each \$100 worth of property. *Bank v. Terrell*, 14 S. W. R., 1003, 78 T., 450.

SEC. 5. Cities having more than ten thousand inhabitants may have their charters granted or amended by special act of the legislature, and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful, for any one year, which shall exceed two and one-half per cent of the taxable property of such city; and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon.

Where a city wrongfully appropriates land without first paying for the same, the damage for which it is liable arises from tort and not from contract and such obligation does not come within this section. *Dallas v. Miller*, 27 S. W. R., 498, 7 C. A., 503.

A contract to pay a debt by the issuance of bonds, no provision being made for a sinking fund, is void. *Howard v. Smith*, 38 S. W. R., 15.

The creation of a debt by a city without making provision required by this section is void. *McNeal v. City of Waco*, 89 T., 83, 33 S. W. R., 322.

The constitution requiring that cities creating debts shall at the same time make provision for the payment of the same by assessing tax to pay the interest and provide a sinking fund does not apply to current expenses. *Biddle v. City of Terrell*, 82 T., 335, 18 S. W. R., 691.

An obligation by a city to pay for the erection of a town hall and school building is not created for current expenses. *Id.*

Construing this section and section nine, article eight, held that cities of 10,000 inhabitants are to be exempted from the maxim limit prescribed for municipalities as a class, and may levy ad valorem taxes to the extent of two and one-half per cent on the \$100 valuation, when so authorized by the legislature. *Dean v. Lufkin*, 63 T., 437; *Cave v. City of Houston*, 65 T., 619.

This section and Sec. 7 of this article, do not apply to an ordinance, under which bonds are issued, for a debt incurred prior to their adoption. *Jefferson v. Bank*, 46 S. W. R., 97.

Construing this section with Sec. 7, Art. II, held that they apply to all cities alike without regard to the number of inhabitants. *City of Terrell v. Dessaint*, 71 T., 770, 9 S. W. R., 593.

Any debt created by the city government, which can not be discharged from the revenues of the current year, and which matures at a period, which would make it a charge upon the city revenues for future years, is a debt within the meaning of this section. *Id.*

Debts for the ordinary running expenses of a city payable within a year out of the incoming revenue does not come within the prohibition mentioned above. *Id.*

A debt contracted by a city for current expenses does not come within this class of debts. *Dwyer v. City of Brehman*, 65 T., 526.



This section has reference to such taxes as are annually collected for the ordinary purposes of municipal government. *Id.*

Issuance of city warrants for expenses of the city, not exceeding current revenue derived from taxation and such other revenue as a city may have from other sources than taxation, is not the creation of a debt prohibited by this section unless a special tax be levied to meet the interest and create a sinking fund. *City of Corpus Christi v. Woessner*, 58 T., 462.

The words "Tax" and "Taxes" and "Taxation," as used in the constitution without some qualifying word in reference to property, apply to ad valorem taxation. *Taylor v. Boyd*, 63 T., 533. *Roundtree v. Galveston*, 42 T., 626.

There is no limit imposed on the legislature as to the amount it may authorize a municipal corporation to assess property holders for local improvement. *Taylor v. Boyd*, 63 T., 533.

This section and Sec. 7 of this article does not prohibit the investment of such fund, otherwise than in the direct redemption of the bonds themselves. *Elser v. City of Ft. Worth*, 27 S. W. R., 739.

A city is not liable on a contract for the construction of a sewer, where no provision was made at the time for its execution and its payment, and it does not appear that the revenues of the city for that year are in excess of its ordinary expenses. *Kuhl v. Laredo*, 27 S. W. R., 791.

An obligation for tort does not come within the meaning of this section. *Dallas v. Miller*, 27 S. W. R., 498.

A petition against a city upon notes must aver that this provision has been complied with. *Biddle v. Terrell*, 18 S. W. R., 691.

A city of more than 10,000 inhabitants having no special charter may levy a tax of one half of one per cent for protection, one fourth of one per cent for improving streets, one fourth of one per cent for ordinary

indebtedness. *Muler v. City of Denison*, 21 S. W. R., 391.

This section only controls debts contracted for after the adoption of the constitution. *Voorhies v. City of Houston*, 7 S. W. R., 679.

SEC. 6. Counties, cities and towns are authorized in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

The subjects to which sections five and six of this article refer being different, the limitations found in section five do not apply to section six. *Voorhes v. Mayor*, 70 T., 331, 7 S. W. R., 679.

To give effect to this section, section five of this article must be held to regulate taxation to raise money for current expenses and to meet further indebtedness, which under the constitution may be created, and in manner operates as a limitation on the powers of taxation conferred by this section. This section relates only to such taxation as is necessary to raise means to pay municipal debts existing at the time the constitution was adopted. *Id.*

Power conferred on a city by this section is not a

discretionary one, but was conferred to secure the rights of creditors and must be exercised when necessary for their protection. *Id.*

Unless a tax-payer avails himself of the right to pay in the coupon bonds or other indebtedness, for the payment of which such tax was levied, by tendering payment before the institution of suit against him, the city is entitled to a money judgment. *Bummel v. Mayor of Houston*, 68 T., 10, 2 S. W. R., 740.

The limitation imposed by this section on the powers of the counties to levy taxes applies only to the erection of public buildings. *T. & P. Ry. Co. v. Harrison*, 54 T., 119.

This section requires the purpose for which such taxes are levied to be specified, and gives the tax-payer the privilege of paying the tax in the coupons, bonds and other indebtedness for the payment of which such tax was levied. *Dean v. Lufkin*, 54 T., 265.

This section makes a tax collected under it a special fund and property taken in lieu of the tax, like the tax itself, cannot be diverted to any other purpose. *City of Sherman v. Williams*, 84 T., 421, 19 S. W. R., 606.

This section makes a tax collected under it a special fund. *City of Sherman v. Williams*, 19 S. W. R., 606.

This section has reference to debts existing at the adoption of the constitution and a city may levy any tax necessary to provide for a debt though its charter limits its taxing power to two per cent ad valorem. *Voorhies v. Houston*, 7 S. W. R., 679, 8 S. W. R., 109.

This section has reference to debts existing at the time of the adoption of the constitution, is not affected as to such debts by Sec. 5 of this Art. *Id.*

This section, together with 5 of this Article, discussed. *Wahahchie v. Brown*, 4 S. W. R., 209, 67 T., 519.

SEC. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, up-

on a vote of two-thirds of the tax-payers therein (to be ascertained as may be provided by law), to levy and collect such tax for construction of sea walks, breakwaters or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

This section is complied with, if at the time of creating the debt, provision is made to collect a sufficient annual sum to meet the interest and provide the sinking fund; although the rate per cent to be levied is not determined. *Mitchel County v. Bank*, 91 T., 370, 43 S. W. R., 880.

This section and section 2 of this article and section 9 of article 8 are self executing, in that all laws in conflict are void but they do not themselves authorize the levying of the tax required by the corporations; they must derive their authority to levy such tax from the legislature. *Id.*

This section is complied with if there is an order providing for the annual collection by taxation of a sufficient sum to pay the interest and create a sinking fund, although it does not fix the rate or per cent of taxation for each year by which such sum is to be collected but leaves the fixing of such rate for each successive year to the commissioners court or city council.

Bassett v. City of El Paso, 88 T., 168, 30 S. W. R., 893.

The act of April 29th, 1893, is constitutional. *Id.*

This section applies to all counties in the state.

Terrell v. Dessaint, 71 T., 770, 9 S. W. R., 593.

The word "debt" used in this section and section 5 of this article, means any pecuniary obligations imposed by contract, except those at the date of the contract, are within the lawful and reasonable contemplation of the party to be satisfied out of the current revenues for the year or out of some fund, then within the control of the corporation. *McNeal v. City of Waco*, 89 T., 83, 33 S. W. R., 322; *Corpus Christi v. Woessner*, 58 T., 465; *Terrell v. Dessaint*, 71 T., 770, 9 S. W. R., 593.

This section did not change or abrogate the charter provision of the City of El Paso. *Conklin v. El Paso*, 44 S. W. R., 883.

A city may create a valid debt without complying with this section, where they have funds which they expect to pay it, although it is never done. *Winston v. City of Ft. Worth*, 47 S. W. R., 740.

This section protects creditors and preserves the honor of municipal corporations. *Terrell v. Dessaint*, 9 S. W. R., 594.

A city is not liable to a contractor for extra street improvement, directed by the city engineer, which was not included in the contract, for the payment of which no provision was made. *Dallas v. Brown*, 31 S. W. R., 298.

A petition in an action against a city must allege that at the creation of the debt provision was made for its payment. *Waco v. McNeal*, 29 S. W. R., 1109, 33 S. W. R., 322, 89 T., 83.

Where a legislative provision fully meets the constitutional requirements, the failure of the commissioners court to comply with it does not render the bonds invalid. *Presidio County v. City Nat. Bank*, 44 S. W. R., 1069; *Mitchell County v. Bank*, 43 S. W. R., 880.

It is not necessary to allege that a law of Texas providing for a sinking fund and interest had been

passed by the legislature. Mitchell County v. Bank, 43 S. W. R., 880.

SEC. 8. The counties and cities on the gulf coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the legislature is especially authorized to aid, by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed or to be constructed in any locality.

Under this section every kind of property within the state, and not especially exempted, is to be taxed and the assessment and collection is to be within the county where it was situated. Llano Cattle Co. v. Faught, 5 S. W. R., 494, 69 T., 402.

SEC. 9. The property of counties, cities and towns owned and held only for public purposes, such as public buildings and sites therefor, fire engines and the furniture thereof, and all property used or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation; *provided*, nothing herein shall prevent the



enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens now existing.

This section exempts from taxation land held by counties for public free school purposes, and such exemption limits the power of the legislature. *Daugherty v. Thompson*, 71 T., 192, 9 S. W. R., 99.

School lands are not subject to taxation while owned by the counties whether the lands be leased or not. *Id.*

This section forbids the taxation of an estate therein less than the fee, whether imposed upon the county or lessee. *Id.*

The exemptions of this section embrace all taxation, special as well as general. *County of Harris v. Boyd*, 70 T., 237, 7 S. W. R., 713.

A house and lot used as a residence received by a city in settlement from tax collector, for taxes not paid over, and not used by the city for public purposes, is not exempt from taxation. *Williams v. City of Sherman*, 84 T., 422, 19 S. W. R., 606.

SEC. 10. The legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at an election held for that purpose, two-thirds of the tax-payers of such city or town shall vote for such tax.

A school tax must be voted before it can be levied,



and the city in question must have legislative authority to control its schools before such election can be had. *El Paso v. Conkling*, 91 T., 537, 44 S. W. R., 988.

This provision permits a vote for school tax only in cities having charters authorizing it. *Id.*

A municipality has no power of its charter alone to levy a school tax. 1 App. C. C., Sec. 989.

A municipality having assumed control of its public schools can collect a tax for school purposes. *Ft. Worth v. Davis*, 57 T., 225; *Dwyer v. Hackworth*, 57 T., 245; *Perry v. Rockdale*, 62 T., 451.

Towns and cities have no power to levy taxes for school purposes other than those expressly authorized by the constitution. *Ft. Worth v. Davis*, 57 T., 225.

This section clearly authorizes the legislature to constitute a city a school district. *Id.*

Act of 1891, authorizing towns incorporated for free school purposes to levy taxes for school purpose is in conformity with this section. *Geib v. St.*, 31 Cr. App., 514, 21 S. W. R., 190; *Jenks v. St.*, 29 Cr. App., 233, 15 S. W. R., 815.

A city, a de facto school district, may levy the tax. *El Paso v. Ruckman*, 46 S. W. R., 27.

A city incorporated under the general law, cannot levy a tax for school purposes, except under certain conditions, expressed in this section. *McCoombs v. City of Rockport*, 37 S. W. R., 988.

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ARTICLE XII.

PRIVATE CORPORATIONS.

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## ARTICLE XII.

## PRIVATE CORPORATIONS.

SEC. 1. No private corporation shall be created except by general laws.

SEC. 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

SEC. 3. The right to authorize and regulate freights, tolls, wharfage or fares, levied and collected or proposed to be levied and collected by individuals, companies or corporations, for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the state, but shall always be under legislative control and depend upon legislative authority.

There is nothing in the constitution prohibiting a corporation from being organized for the expressed purpose of buying, selling and dealing in live stock bouds, securities and other properties of all kinds.

Bank v. Investment Co., 74 T., 422, 12 S. W. R., 101.

SEC. 4. The first legislature assembled after the adoption of this constitution shall provide a mode of procedure by the attorney-general and district or county attorneys, in the name and behalf of the state, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

This section does not authorize the legislature to confer on county attorneys, power to institute proceedings against a railroad company for exercising power not conferred by law. *State v. I. & G. N.*, 89 T., 562, 35 S. W. R., 1067.

This section applies where charges are demanded for the use of property, devoted to the public in the absence of a law authorizing such charge. *Id.*

This section gives county attorneys right to institute a quo warranto proceedings in the name of the state to oust one from the exercise and enjoyment of a franchise not authorized by law. *Morris v. St.*, 62 T., 729. (This case distinguished from *Paris Ry. Co. v. St.*, 55 T., 76; annotated under Art. 5 Sec. 21).

SEC. 5. All laws granting the right to demand and collect freight, fares, tolls or wharfage, shall at all times be subject to amendment, modification, or repeal by the legislature.

SEC. 6. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.

Stock was issued for payment of land worth one-half of the value of the stock and for valuable contract for construction for water works and light plants and net earnings, in the plant prior to such issuance of such stock, all of which was estimated at par value of stock, held that such action was forbidden by this section and that the stockholders were not liable for payment of claims against the corporation. *Cole v. Adams*, 92 T., 171, 46 S. W. R., 790.

This section does not prohibit the sale of lands by a corporation for cash at 95 per cent of their par value. *Ry. Co. v. Worthington*, 88 T., 573, 30 S. W. R., 1055. (27 S. W. R., 746, overruled).

Stock issued and disposed of for a valuable consideration, though for less than its face value, is not fictitious, within the meaning of this section. *Mathis v. Pridham*, 20 S. W. R., 1015.

It is not to be presumed that parties to a contract intended to violate this contract. *Ry. Co. v. Adams*, 26 S. W. R., 1041, 87 T., 125.

This section does not apply as against creditors of a company in favor of subscribers, who have knowingly accepted paid up stock to the amount of their subscriptions. *Nenney v. Waddill*, 25 S. W. R., 308.

This section does not render the accommodation indorsement on a draft by a corporation void in the hands of a bona fide holder for value, before maturity. *Bank v. McNeal*, 34 S. W. R., 344.

SEC. 7. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute, of this state, or of the Republic of Texas.



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## ARTICLE XIII.

SPANISH AND MEXICAN LAND TITLES.

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## ARTICLE XIII.

## SPANISH AND MEXICAN LAND TITLES.

SECTION 1. All fines, penalties, forfeitures and escheats, which have heretofore accrued to the Republic and State of Texas, under their constitutions and laws shall accrue to the state under this constitution, and the legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheat to the state shall, *ipso facto*, enure to the protection of the innocent holders of junior titles, as provided in section 2, 3 and 4 of this article.

Locations made in violation of law do not give rights under this section. Mex. Ry. Co. v. Locke, 12 S. W. R., 89.

See where it is intimated that a location on valid land certificate made before the adoption of the constitution, would constitute color of title, which would entitle the holder to the benefit of this section. Id.

This section does not authorize the legislature to create an escheat; it simply directs it to provide a method for ascertaining whether or not there has been, in any case, an escheat. Caplen v. Compton, 27 S. W. R., 25.

SEC. 2. Any claim of title or right to land in

Texas, issued prior to the 13th day of November, 1835, not duly recorded in the county where the land was situated at the time of such record; or not duly archived in the general land office; or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived or recorded, or occupied as aforesaid, has been, or ever shall be, released or waived, but actual performance of all such conditions shall be proved by the person or persons claiming under such title or claim of right in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the non-performance of all such conditions.

Holders of land under "Junior Title" or "Color of Title," as stated in this section and section 1 of this article, are those holding under a grant or patent subsequent to the one in conflict, or under such title as matured upon a location, prior to the adoption of the constitution. *Texas-Mexican Ry. Co. v. Locke*, 74 T., 370, 12 S. W. R., 80.

SEC. 3. Non payment of taxes on any claim of title to land dated prior to the 13th day of November, 1835, not recorded or archived, as provided in section 2, by the person or persons so claiming, or those under whom he or they so claim, from that date up to the date of the adoption of this constitution, shall be held to be a presumption that the right thereto has reverted to the state, and that said claim is a stale demand, which presumption shall only be rebutted by payment of all taxes on said lands, state, county, and city or town, to be assessed on the fair value of such lands by the comptroller, and paid to him, without commutation or deduction for any part of the above period.

SEC. 4. No claim of title or right to land, which issued prior to the 13th day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the general land office, shall ever hereafter be deposited in the general land office, or recorded in this state, or delineated on the maps, or used as evidence in any of the courts of this state, and the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words, "duly recorded," as used in sections 2 and 4 of this article, is meant that such claim of title or right to land shall have been re-

corded in the proper office, and the mere errors in the certificate of registration, or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.<sup>1</sup>

A Mexican grant, deposited in the land office, subsequent to 1876, is admissible in evidence, if valid, notwithstanding this section, which forbids any claim of title to land issued prior to Nov., 1835, to be used in evidence. *Lerma v. Stevenson*, 40 Federal Reporter, 356.

The clause "that no claim of right or title to land which issued prior to the 13th of November, 1835, etc.," has application only to such evidence of right as before that time could have been archived or recorded, namely, writings evidencing title. *Tex.-Mex. Ry. Co. v. Locke*, 74 T., 370, 12 S. W. R., 80.

The effect of this section was to deny to holders of the claims as were not recorded or archived at its adoption, the power or right to exhibit their rights in due course of law. And the only means recognized in this section, for establishing title not recorded or archived, is by possession so long that a grant may be presumed under the rule applicable to it. *Id.*

This section has no application to a transcript of a vista general of 1767, concerning the City of Laredo, which transcript was deposited in the land office before the constitution was adopted. *Ry. Co. v. Jarvis*, 69 T., 527, 7 S. W. R., 210.

A second copy of a title delivered to a party to serve him as a title, is not considered an archive of the land office, and a certified copy of it is not admissible. *Haurick v. Dood*, 62 T., 75; *Haurick v. Cavanan*, 60 T.

1. Prior to the adoption of the constitution, a title under a Mexican grant did not have to be registered or achieved. *Gonzales v. Ross*, 120 U. S., 607.

SEC. 5. All claims, locations, surveys, grants and titles of any kind which are declared null and void by the constitution of the republic or state of Texas, are, and the same shall remain forever, null and void.

SEC. 6. The legislature shall pass stringent laws for the detection and conviction of all forgers of land titles and may make such appropriations of money for that purpose as may be necessary.

In pursuance of this article the act of 1876, making it a crime to forge land certificates, and giving the state the right to indict them in the County of Travis or in the county where the land was situated, was passed. *Ham v. St.*, 4 Cr. App., 645; *Frances v. St.*, 7 Cr. App., 501; *Johnson v. St.*, 9 Cr. App., 249; *Hanks v. St.*, 13 Cr. App., 289.

SEC. 7. Sections 2, 3, 4 and 5 of this article, shall not be so construed as to set aside or repeal any law or laws of the republic or state of Texas, releasing the claimants or headrights of colonists of a league of land, or less, from compliance with the conditions on which their grants were made.





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ARTICLE XIV.

PUBLIC LANDS AND LAND OFFICE.

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## ARTICLE XIV.

## PUBLIC LANDS AND LAND OFFICE.

SECTION 1. There shall be one general land office in the state which shall be at the seat of government where all land titles which have emanated or may hereafter emanate from the state shall be registered, except those titles the registration of which may be prohibited by this constitution. It shall be the duty of the legislature at the earliest practical time to make the land office self-sustaining, and from time to time the legislature may establish such subordinate offices as may be deemed necessary.

SEC. 2. All unsatisfied genuine land certificates barred by section 4, article 10, of the constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the general land office within five years after the adoption of this constitution, or be forever barred; and all genuine land certificates hereafter issued by the state shall be

surveyed and returned to the general land office within five years after issuance, or be forever barred; *provided*, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented only upon vacant and unappropriated public domain, and not upon any land title equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

A mere irregularity in applying the certificate cannot deprive the survey of the character of the land "equitably owned under color of title from the sovereignty of the soil". *Adams v. Ry. Co.*, 70 T., 253, 7 S. W. R., 729.

Land covered by void title does not constitute a part of public domain, subject to location, and such lands, within the meaning of this section, are "land titled." *Day Co. v. St.*, 68 T., 526, 4 S. W. R., 865.

The want of notice provided for in this section, does not operate as an estoppel against the state and validate patents of unappropriated public domain. *Id.*

Notice attaches only from recording field notes in the surveyor's office. *Evitts v. Roth*, 61 T., 87; *Ry. Co. v. Thompson*, 65 T., 190.

Under this section a homestead donation is not void because of a mere occupation of the land. *Mad-dox v. Turner*, 79 T., 279, 15 S. W. R., 237; *Yockum v. McCurdy*, 39 S. W. R., 210.

This section does not prohibit the bringing of a suit by the state against the holder of such title to cancel the same and recover the land, and when the land is recovered in such suit it ceases to belong to the class

of prohibited lands and is again subject to location. *Faulk v. Sanderson*, 89 T., 692, 36 S. W. R., 403.

This section requiring land certificates to be certified and returned to the general land office within five years does not deprive the legislature of the power to validate, after that time, a location which was defective, because the survey was not made by the proper surveyor. *Cox v. Ry. Co.*, 68 T., 226, 4 S. W. R., 455; *Duren v. Ry. Co.*, 86 T., 287, 24 S. W. R., 258.

The words "land titled," as used in this section, embrace land covered by that evidence of right which the states gives through a patent and are not restricted to those lands which are held, under a patent, which in the absence of this section, would be deemed sufficient to confer title. *Wiusor v. O'Connor*, 69 T., 571, 8 S. W. R., 519.

When an illegal location is made on land titled, the subsequent cancellation of the patent will not validate the location. *Id.*

Under this section any location made on land, which, before the adoption of the constitution, had been patented, is illegal, though the patent may have been issued from the offices of the state authorized to convey title. *Id.*

If the grant is void or voidable, yet in contemplation of this section the land embraced in the calls of the patent would for the purposes of this section be deemed "land title" *Id.* *Trueheart v. Babcock* 51 T., 169; *Summers v. Davis*, 49 T., 554; *Westrope v. Chambers*, 51 M., 178; *Bryant v. Crumpt*, 55 T., 10.

This section prohibits the location of land certificates on land lawfully held by evidence of right, inferior to a legal title, as well as to prohibit the locations of such certificates on land titled. *Adams v. Ry. Co.*, 70 T., 253, 7 S. W. R., 729.

Where a patent to land has once issued, however irregular or illegal may have been the course of procedure, it is not subject to future location, such land being land titled. *Id.*

Land cannot, when patented, be "equitably owned" when the surveys on the public domain, by virtue of which they are claimed, were made in violation of law. *Id.*

The facts which give color of title must also give equitable ownership to defeat a subsequent location and survey on the same land. *Dawson v. McLeary*, 87 T., 524, 29 S. W. R. 1044.

Any location made on land which was patented before the adoption of the constitution is illegal. *Barker v. Torrey*, 69 T., 4, W. R., 646.

This section prohibiting locations on land titled or equitably owned, does not apply to land covered by a forged grant and does not prevent a preemptor from establishing his preemption on the same. *Hanrick v. Dodd*, 62 T., 75.

A forfeited location does not give ownership under color of title, and where locations has ceased to have effect, the land may be located and patented to another person. *Atkinson v. Wood*, 61 T., 387.

A location made under an unrecorded land certificate does not confer equitable ownership which would withdraw the land from appropriation by some other person. *Miller v. Brownson*, 50 T., 583.

When land is not "titled" the constitution does not prohibit its location unless it be equitably owned under color of title from the sovereignty of the state. *Winsor v. Connor*, 69 T., 571, 8 S. W. R., 519.

This section does not prevent the legislature from validating, after the five years, a location which was defective because the survey was not made by the proper surveyor. *Blum v. Hand T. C. Ry. Co.*, 10 C. A., 312, 31 S. W. R., 526.

Failure to have land certificate returned in five years after their issuance, as laid down in this section, operates as a forfeiture of any right under them. *Von Rosenberg v. Cueller*, 80 T., 249, 16 S. W. R., 58.

Land issued by Spanish governor in 1798, and



patent issued by the republic of Texas in 1842, is not vacant and unappropriated domain within this section. *Wright v. Nelson*, 46 S. W. R., 261.

This section applies to original certificates and not to a certified copy made by the commissioners of the land office for use after the original has been returned to that office. *Land Co. v. Thompson*, 83 T., 170, 17 S. W. R., 920.

Where land was filed upon and field notes returned to the land office, by virtue of a duplicate land certificate, where an original had never existed, such land was not "titled land" as against a subsequent claimant locating upon it before the patent had issued. *Gunter v. Meade et al.*, 78 T., 635.

Field notes returned to the general land office is notice that the land is equitably owned. *Groesbeeck v. Harris*, 82 T., 411, 19 S. W., 850.

This section assumes that there was an unappropriated public domain upon which location could be made, etc. *G. H. & S. A. Ry. Co. v. St.*, 77 T., 369.

Land surveyed and claimed under an act of 1857, comes within the meaning of this section. *Massey v. Ry. Co.*, 27 S. W. R., 208.

Where concessions confer the right to purchase land and the commissioner has power to issue title to the lands conveyed, such are titled lands within the meaning of this section. *Mex. Ry. Co. v. Locke* 74 T., 370, 12 S. W. R., 81.

See where land was held to be equitable owned and not subject to location. *Wynne v. Kennedy*, 33 S. W. R., 298.

If land patent, which calls for surrounding surveys, be limited to the amount of land mentioned in it, any excess above such amount, within the lines of the surrounding surveys, is not "land titled." *Maddox v. Turner*, 79 T., 279, 15 S. W. R., 237.

SEC. 3. The legislature shall have no power to

grant any of the lands of this state to any railway company except upon the following restrictions and conditions:

First. That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company until they have equipped, constructed and in running order at least ten miles of road, and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the state and become a portion of the public domain, and liable to location and survey. The legislature shall pass general laws only, to give effect to the provisions of this section.

SEC. 4. No certificate for land shall be sold at the land office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

This section refers exclusively to the sale of land certificates at the land office and does not affect the validity of the act of 1879, amended in 1881, providing for the sale of a portion of the unappropriated public domain of the state. *Sanborn v. Gunter*, 84 T., 273, 17 S. W. R., 117.

SEC. 5. All lands heretofore or hereafter granted to railway companies, where the charter or law of the state required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the state, and subject to preemption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the attorney-general, in every instance, where alienation have been or hereafter may be made, to inquire into the same and if such alienation has been made in fraud of the rights of the state, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated, to forfeit such lands to the state, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the state and become a part of the vacant public domain, liable to preemption, location and survey.

SEC. 6. To every head of a family without a homestead there shall be donated one hundred and sixty acres of public land, upon condition that he will select and locate said land, and occupy the same three years and pay the office fees due thereon. To all single men of eighteen years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

Where wife owns homestead, occupied as such by the family, the husband can not acquire, by preemption, another homestead on the public domain. *Garrison v. Grant*, 57 T., 602.

Preemption laws have two fold objects, one to secure the settlement of the country by encouraging immigration; the other is to secure homes to the homeless and not to those who are already provided for in particular. *Gambrell v. Steele*, 55 T., 582.

To obtain the 160 acres of land as an appropriation, it must be settled upon and occupied by the party. *Mills v. Brown*, 69 T., 245.

Act of 1895, authorizing the commissioner of the general land office to lease public lands, does not violate this section. *Bain v. Simpson*, 45 S. W. R., 395.

A homestead donation can not be acquired by settlement, under this section, before the expiration of three years. *Roberts v. Trout*, 35 S. W. R., 323.

See facts which prevented wife from asserting homestead rights against a grantee of the land. *Id.*

SEC. 7. The State of Texas hereby releases to the owner or owners of the soil, all mines and minerals that may be on the same, subject to taxation as other property.

SEC. 8. Persons residing between the Nueces river and the Rio Grande, and owning grants for lands which emanated from the government of Spain, or that of Mexico, which grants have been recognized and validated by the state, by acts of the legislature, approved February 10, 1852, August 15, 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the first day of January, 1880, to complete their surveys and the plots thereof, and to return their field notes to the general land office, and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of the third persons.



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ARTICLE XV.

IMPEACHMENT.

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## ARTICLE XV.

## IMPEACHMENT.

SECTION 1. The power of impeachment shall be vested in the house of representatives.

SEC. 2. Impeachment of the governor, lieutenant-governor, attorney-general, treasurer, commissioner of the general land office, comptroller, and the judges of the supreme court, court of appeals and district courts, shall be tried by the senate.

SEC. 3. When the senate is sitting as a court of impeachment, the senators shall be on oath, or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the senators present.

SEC. 4. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust, or profit, under this state. A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law.

SEC. 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during the pendency of such impeachment. The governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

SEC. 6. Any judge of the district courts of the state who is incompetent to discharge the duties of his office, or who shall be guilty of partialty, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the supreme court. The supreme court shall have original jurisdiction to hear and determine the causes aforesaid, when presented in writing upon the oaths, taken before some judge of a court of record, of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the supreme court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The supreme court may issue all needful process and prescribe all needful rules to give effect to this section.

Causes of this kind shall have precedence and be tried as soon as practicable.

SEC. 7. The legislature shall provide by law for the trial and removal from office of all officers of this state, the modes for which have not been provided in this constitution.

This section gives the legislature power to pass a law providing for the removal of officers, for official misconduct, although the party has not been convicted on an indictment for the offense alleged. *Bland v. St.*, 38 Cr. App., 253, 38 S. W. R., 253.

#### ADDRESS.

SEC. 8. The judges of the supreme court, court of appeals and district courts, shall be removed by the governor on the address of two-thirds of each house of the legislature, for wilfull neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; *provided, however*, that the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journals of each house; *and provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be

admitted to a hearing in his own defense before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house respectively.

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ARTICLE XVI.

GENERAL PROVISIONS.

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## ARTICLE XVI.

## GENERAL PROVISIONS.

SECTION 1. Members of the legislature and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation: "I, . . . . ., do solemnly swear (or affirm), that I will faithfully and impartially discharge and perform all the duties incumbent upon me as . . . . ., according to the best of my skill and ability, agreeably to the constitution and laws of the United States and of this state; and I do further solemnly swear (or affirm), that since the adoption of the constitution of this state, I, being a citizen of this state, have not fought a duel with deadly weapons, within this state nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted any person thus offending: And I furthermore solemnly swear (or affirm), that I have not, directly nor indirectly, paid, offered or promised to pay, contributed nor promised to contribute, any money or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was

elected (or, if the office is one of appointment, to secure my appointment): So help me God."

See where, in a written circular, a party promised, that if elected he would not charge ex-officio fees. *Bland v. St.*, 38 S. W. R., 252, 38 Cr. App., 253.

Where a criminal case is tried by a special judge and the record fails to show that he took the oath of office, though it does show his appointment, by the governor, a conviction will be reversed. *Weatherford v. St.*, 28 S. W. R., 814.

This section makes a distinction between the right to an office and the right to enter upon the duties of an office. *St. v. Cocke*, 54 T., 486.

SEC. 2. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections, and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult, or other improper practice.

This section only requires suitable legislation, excluding from the various privileges of citizenship, persons who are convicted of the felony therein specified. *Easterwood v. St.*, 31 S. W., 295.

This section and Art. 6, Sec. 1, do not antagonize one another. *Id.*

SEC. 3. The legislature shall make provision

whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and costs, shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.

This section is not a limitation on the power of the legislature to provide that manual labor may be required of misdemeanor convicts, when the punishment is confinement in the county jail for more than one day. *Ex parte Bates*, 37 Cr. App., 548, 40 S. W. R., 268.

SEC. 4. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this state.

SEC. 5. Every person shall be disqualified from holding any office of profit or trust in this state, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

This section does not warrant the removal of a respondent from office, on the charge of bribery, before there has been a legal conviction for the offense. *St. v. Humphries*, 74 T., 469, 12 S. W. R., 99.

SEC. 6. No appropriation for private or individual purposes shall be made. A regular statement under oath, and account of the receipts and expenditures of all public money, shall be published annually, in such manner as shall be prescribed by law.

SEC. 7. The legislature shall in no case have power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money.

SEC. 8. Each county in the state may provide, in such manner as may be prescribed by law, a manual labor poor house and farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

SEC. 9. Absence on business of the state or of the United States shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this constitution.

SEC. 10. The legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

[Sec. 11, Art. 16, declared adopted September 22, 1891.]

SEC. 11. All contracts for a greater rate of interest than ten per centum per annum shall be deemed usurious, and the first legislature after this amendment is adopted shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum.

Arts. 3102, 3104, R. S., 1895, in so far as they restrict the constitutional declaration to written contracts, are unconstitutional. *Assn. v. Lane*, 81 T., 369, 17 S. W. R., 77.

This section is self executing and all contracts for a higher rate than twelve per cent are illegal from the date of the adoption of the constitution, independent of all laws passed in response to this section. *Hemp-hill v. Watson*, 60 T., 679.

This section took effect without legislation and rendered illegal any contract providing for more than twelve per cent interest, made after the adoption of this section and before legislation was passed in pursuance of it. *Watson v. Aiken*, 55 T., 536.

This section is self executing. *Quinlan Estate v. Syme*, 50 S. W. R., 1069; *Roberts v. Coffin*, 53 S. W. R., 597.

A verbal agreement, to extend payment of a matured note, drawing lawful interest, in consideration of usurious interest, comes under the constitution. *Id.*

This section applies to verbal contracts. *Loan Co. v. Keller*, 50 S. W. R., 183.

R. S., Art. 3103, et. seq. in so far as they restrict the constitutional declaration to written contracts are unconstitutional. *Dunman v. Harris Co.*, 41 S. W. R., 499.

An agreement providing for more than ten per cent interest is illegal only to the excess. *Roberts v. Coffin*, 53 S. W. R., 597.

SEC. 12. No member of Congress, nor person holding or exercising any office of profit, or trust under the United States or either of them, or under any foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of profit or trust under this state.

SEC. 13. It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect the method of trial.

SEC. 14. All civil officers shall reside within the state, and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

This provision in so far as it refers to the place of residence of the officers, is self executing, and requires no legislation to put it in to force. *Ehlinger v. Rankin*, 29 S. W. R., 240.

This section makes it the duty of the county treasurer to keep his office at the county seat. *Caruthers v. St.*, 2 S. W. R., 93.

SEC. 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation as well, to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

If wife's separate means enters into purchase of their property, the latter is her separate property. *Ross v. Karurumph*, 64 T., 394.

If husband owes wife, and transfers property to her to cancel the same, the property so conveyed is separate property of the wife. *Id.*

Insurance on a man's life, payable to his wife, is her separate property. *Evan v. Opperman*, 76 T., 299, 13 S. W. R., 312.

The sole legatee of a decedent, who had in his life time sold certain lands to another and received a conveyance of the same, from the heirs, of the heirs of the purchasers in consideration of her releasing her claim for purchase money against their ancestors; the conveyance to her, although married, was her separate property. *O'Connor v. Vineyard*, 91 T., 488.

Property conveyed to wife for her sole and separate use, is her separate property. *Morrison v. Clark*, 55 T., 437.

All property acquired during marriage by onerous title, is presumed to be community property. *Wallace v. Campbell*, 54 T., 87; *Cox v. Miller*, 54 T., 16 (and cases there cited).

Crops grown upon wife's land at expense of her



separate estate is community property. *Conner v. Hawkins*, 56 T., 639; *Cleveland v. Cole*, 65 T., 402; *Garr v. Tucker*, 42 T., 330; (*Deblanc v. Lynch*, 23 T., 25; *Forbes v. Dunham*, 24 T., 611).

Profits on investments of wife's separate property becomes community property. *Epperson v. Jones*, 65 T., 425.

Property arising from investment of married women separate property becomes community property. *Smith v. Bailey*, 66 T., 54; *Braden v. Gase*, 57 T., 41; *Green v. Ferguson*, 62 T., 529; *Epperson v. Jones* 65 T., 426; *Cleveland v. Cole*, 65 T., 402; *Cox v. Miller*, 54 T., 26; *Goddard v. Reagan*, 8 C., A., 272, 28 S. W. R. 352.

Merchandise not acquired by wife by gift, devise or descent, nor exchanged by property so acquired, but purchased by money by wife upon faith of her separate property, is community property and not separate property. *Heidenheimer v. McKeen*, 63 T., 229.

Where land, separate property of the wife, was given in part payment for a larger tract, the exchange created a resulting trust in favor of the wife in the larger tract, in proportion of the value of the land exchanged. *Parker v. Coop*, 60 T., 111.

Property deeded to the daughter by father is her separate property. *John v. Battle*, 58 T., 591.

Land paid for in part with her separate funds, inherited from her father and held in trust under his will by her husband, for her benefit, is her separate property. *John v. Battle*, 58 T., 591.

A mere deposit of money by the husband for his wife, a receipt being taken in her name, is not of itself sufficient to prove it a gift as her separate property. *Welborn v. O. F. B.*, 56 T., 509.

Property received by the wife or husband by donation, is separate property. *Fisk v. Flores*, 43 T., 344.

Interest due from husband on money borrowed

from his wife, he agreeing to pay her for use of same, is her separate property. *Hamilton-Brown Shoe Co. v. Whitaker*, 23 S. W. R., 520, 4 C. A., 380; *H. B. Co. v. Kellum*, 23 S. W. R., 524; *H. B. Co. v. Cameron*, 23 S. W. R., 525.

Promissory note given to wife in consideration for land, her separate property, payable to her order, is her separate property. *Fisk v. Flores*, 43 T., 344.

Donation made to married woman for services rendered by her is her separate property. *Fisk v. Flores*, 43 T., 344.

If wife buys land with borrowed money, which she subsequently pays with her separate money, the land so purchased is her separate property. *Schuster v. Jewelry Co.*, 79 T., 179, 15 S. W. R., 259.

Land purchased and payments discharged with separate funds, is separate property. *Harrison v. Imp. Co.*, 41 S. W. R., 842; *Evans v. Purington*, 12 C. A., 158, 34 S. W. R., 350; *Parker v. Fagarty*, 4 C. A., 615, 23 S. W. R., 700; *Sensheim v. Kuhl*, 6 C. A., 2, 24 S. W. R., 533; *Cabel v. Menceyer*, 35 S. W. R., 208.

Note given to wife, for her separate property, becomes her separate property. *Morris v. Edwards*, 1 App. C. C., Sec. 549; *Hamilton v. Brooks*, 51 T., 145; (*Heiningway v. Matthews*, 10 T., 207; *Rose v. Houston*, 11 T., 326; *Will v. Cockrum*, 13 T., 137).

Property bought with separate property of one of the parties, remains separate property. *Schneider v. Fowler*, 1 App. C. C., Sec. 856, (*McIntyre v. Chappell*, 4 T., 187; *Love v. Robertson*, 7 T., 8; *Houston v. Courl*, 8 T., 240).

A minor son with his earnings bought a pony and gave it to his mother, she bought land giving the pony as part payment; held that the land was not separate property. *Schuster v. Bauman*, 79 T., 183, 15 S. W. R., 259.

Interest and principal of a note executed by the husband to the wife, for her separate money loaned

him, is her separate property. *Hollis v. Daschiel*, 52 T., 299; *Mitchell v. Mitchell*, 80 T., 114, 15 S. W. R., 705; *Mitchell v. Mitchell*, 84 T., 307, 19 S. W. R., 705.

Where the wife's separate means enters into a purchase of other property, she has a separate interest in that property, for that amount. *Smith v. Bailey*, 66 T., 554, 1 S. W. R., 627; *Goddard v. Reagan*, 8 C. A., 262, 28 S. W. R., 352.

Land community property of the parties, conveyed by husband to wife, is her separate property. *Lewis v. Simon*, 72 T., 475, 10 S. W. R., 554.

Where husband, in executing a note to wife, intended to make it her separate property, subsequent accruing interest, as between them, will be her separate property. *McCormick v. McNeel*, 53 T., 21.

Property purchased by wife on credit for merchandising purchasing purposes, is community property. *Heidenheimer v. McKeen*, 63 T., 229. *Id.*

Merchandise not acquired by gift, devise or descent, nor by the exchange of property so acquired, but purchased by wife with money borrowed upon faith of her separate estate as security, is community property. *Id.*

The increase of cows, the separate property of the wife, becomes community property. *Blum v. Light*, 81 T., 414.

Damages recovered for tort inflicted on wife is community property. *Ezell v. Dodson*, 60 T., 331; *Gallagher v. Bowie*, 66 T., 265.

Where husband at time of marriage has stock of goods, and after marriage replenishes them, husband has separate interest in the stock to the amount he possessed at the time of marriage. *Schmidt v. Huppmann*, 73 T., 112.

Deed to husband and wife creates a separate interest in each half of the property. *Bradley v. Love*, 60 T., 477; *Regan v. Williams*, 63 T., 129.

If husband buys land and pays for it out of wife's separate estate, the land is her separate property. *Car-*

ter v. Balin, 30 S. W. R., 1084; Cobb v. Trammell, 9 C. A., 533, 30 S. W. R., 482.

But if the husband borrows the money from the wife the property so purchased is not her separate property. Torrey v. Cameron, 73 T., 588, 11 S. W. R., 840.

Real estate purchased by wife, with her money, is her separate property. Schuster v. Bauman, 79 T., 182, 15 S. W. R., 259; Mitchell v. Mitchell, 80 T., 114, 15 S. W. R., 705; Mitchell v. Mitchell, 84 T., 307, 19 S. W. R., 477.

Personal property received in payment for the homestead of an insolvent debtor, when transferred by him to the wife, to be her separate property, will be held as her separate property. Blum v. Light, 81 T., 414, 16 S. W. R., 1090; Burnham v. McMichael, 6 C. A., 499, 26 S. W. R., 887; Gatewood v. Schurlock, 2 C. A., 99, 21 S. W. R., 55.

Wife's interest in community property becomes, at her separate marriage, her separate property. Nelson v. Frey, 4 App. C. C., Sec. 248.

Where relative of wife buys land in an execution sale against the husband, and the deed is made to the wife, the land is her separate property. Zorn v. Tarver, 57 T., 391.

As to subsequent creditors and purchasers with notice, husband may by contract make the increase of life stock the separate property of the wife. DeGarca v. Galvan, 55 T., 56.

Damages recovered to wife's separate real estate is her separate property. S. A. & A. P. v. Flato, 13 C. A., 214, 35 S. W. R., 859.

Sums received by the month under a will by the husband for his support is his separate property. McClelland v. McClelland, 37 S. W. R., 357.

Damages recovered by the wife in an action for tort against her husband and another person is her separate property. Nicherson v. Nicherson, 65 T., 284.

Damages to be recovered from a third person for

tort committed upon wife, by him alone, is community property. *Id.*, *Ezzell v. Dodson*, 60 T., 334.

Where land and its increase has been set apart for the use of the support and maintainance of widow and minor children, horses purchased by the proceeds of the crop is separate property. *Young v. Willis*, 63 T., 390.

No property acquired by the wife during coverture becomes her separate estate, except such as is derived by gift, devise or descent. *Ezell v. Dodson*, 60 T., 331, *Edwards v. Brown*, 68 T., 329.

Lots purchased by wife's separate property is her separate property. *Ullman v. Jasper*, 70 T., 446, 7 S. W. R., 763.

Wife bought land paying one-third down and gave two notes signed by herself and husband for the balance, deed made to her and notes paid by money, given by her husband, held land was her separate property. *Schuster v. Jewelry Co.*, 79 T., 179, 15 S. W. R., 229.

Horses bought on credit, paid by her separate property, is her separate property. *Blum v. Light*, 81 T., 420, 16 S. W. R., 1090.

A note executed for cattle, the cattle being her separate property, the note is her separate property. *Edwards v. Osman*, 8 T., 636.

A paper evidencing right to wife, made by husband, though still in his possession, is a gift to the wife and is her separate property. *Richardson v. Hutchins*, 68 T., 81, 3 S. W. R., 276; *Brown v. Brown*, 61 T., 58.

If separate funds of wife are given in part payment of land, she has a separate interest in the land, to the extent of her separate funds. *Blum vs. Rogers*, 71 T., 668, 9 S. W. R., 595; *Cleveland v. Cole*, 65 T., 402; *Battle v. John*, 49 T., 203; *Branden v. Gose*, 57 T., 37; *Zorn v. Tarver*, 45 T., 519.

Land bought and paid for before one's marriage. After he married he compromised a suit brought against



him for the land. Held if husband acquired good title by first purchase, it was his separate property. *Akin v. Jefferson*, 65 T., 138.

Where husband purchased property at a sheriff foreclosure sale, and had sheriff make the deed to his wife and he afterwards recognized it, as between them and all persons not affected thereby, it will be her separate property. *Peters v. Clements*, 46 T., 125 (*Clay v. Power*, 24 T., 305, *Higginson v. Johnson*, 20 T., 395).

Certificate for services in the army of the republic, rendered before marriage, but issued after marriage, is the separate property of the husband. *Parker v. Newberry*, 83 T., 431, 18 S. W. R., 815.

Profits arising from investment of separate property in land, will be separate property. *Cabell v. Mencyer*, 35 S. W. R., 206; *Evans v. Purington*, 12 C. A., 158, 34 S. W. R., 352.

SEC. 16. No corporate body shall hereafter be created, renewed or extended with banking or discounting privileges.

This section is a limitation upon the powers of the legislature, forbidding the creation, renewal or extension of such corporations within this state. It was not intended to prohibit foreign banking corporations from resorting to the courts of this state for the enforcement of their legal rights, which they have against citizens of this state, which rights are not claimed to be "banking and discounting privileges" exercised in this state. 3 App. C. C., Sec. 338.

See where it was held that a note given by a corporation was void under this section and that no action could be maintained on it. *Anderson v. Loan Co.*, 16 S. W. R., 298.

The taking by a loan association of a members

note, in excess of the amount loaned, no part of the loan being retained, is not a discounting privilege within the meaning of this section. *Sweeney v. Loan Co.*, 26 S. W. R., 290.

See statement of facts which did not come within the meaning of this section. *Luzenberg v. Loan Co.*, 29 S. W. R., 237.

This section does not render an act of a corporation, in discounting a note, illegal and void. *Logan Co. v. Logan*, 28 S. W. R., 141.

SEC. 17. All officers within this state shall continue to perform duties of their offices until their successors shall be duly qualified.

A county superintendent is not entitled to salary between the time his office is abolished and the county judge assumes such office. *Stanfield v. State*, 83 T., 320, 18 S. W., 577; *Stanfield v. Bexar Co.*, 28 S. W. R., 114.

This section does not deprive the court of jurisdiction to remove an officer who failed to give bond after reelection. *State v. Cocke*, 54 T., 484; *Flanton v. St.*, 56 T., 93; *Robinson v. St.*, 28 S. W. R., 567.

This section applies to state and county officers only and not to city officers. 3 App. C. C., Sec. 145.

This section was to meet such emergencies as might occur under laws requiring election or appointment to such officers, to be made every two years. *State v. Catlin*, 84 T., 52, 19 S. W. R., 302.

An officer whose resignation has been tendered to the proper authorities and accepted, continues in office and is not released from its duties and responsibilities until his successor is appointed or chosen and qualified. *Jones v. City of Jefferson*, 66 T., 577.

A tax collectors bond, together with its approval, as required by law, is the best evidence as to the time the officer qualified. *Webb County v. Gonzales*, 69 T., 455, 6 S. W. R., 782.



An appointed judge is an officer within the meaning of this section, and it authorized him to hold his office until his successor has qualified. *Hamilton v. St.*, 51 S. W. R., 219.

This section does not deprive the county court of jurisdiction to remove a sheriff who failed to give bond, after re-election. *Robinson v. St.*, 28 S. W. R., 566, 29 S. W. R., 649, 87 T., 562, 29 S. W. R., 1063, 87 T., 565.

The unconditional tender of his resignation by a county judge creates no vacancy where it is not accepted and is afterwards withdrawn. *McGee v. Dickey*, 23 S. W. R., 404.

An officer, whose resignation has been tendered to the proper authorities and accepted, continues in office and is not relieved from his duties until his successor is appointed, chosen and qualified. *Jones v. City of Jefferson*, 66 T., 577, 1 S. W. R., 903.

SEC. 18. The rights of property and of action, which have been acquired under the constitution and the laws of the republic and shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void by the constitution of the republic and state, be reinvested, renewed, or reinstated by this constitution; but the same shall remain precisely in the situation which they were before the adoption of this constitution, unless otherwise herein provided; *and provided, further*, that no cause of action heretofore barred shall be revived.

It was not the intention of the constitutional convention to divest or interfere with pre-existing rights. *Wright v. Straub*, 64 T., 64.

SEC. 19. The legislature shall prescribe by law the qualification of grand and petit jurors.

The jury law passed by the fifteenth legislature meets the demands of this section. *Long v. St.* 1 Cr. App., 715.

This section gives the legislature authority to provide similar or different qualifications for jurors in civil and criminal cases. *Hunter v. St.*, 17 S. W. R., 415.

[Sec. 20, Art. 16 declared adopted September 22, 1891.]

SEC. 20. The legislature shall at its first session enact a law whereby the qualified voters of any county, justice's precinct, town, city (or such sub-division of a county as may be designated by the commissioner's court of said county) may by a majority vote determine from time to time whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

Local option laws, and districts established under it, were not affected by the constitutional amendment. *Winston v. St.*, 32 Cr. App., 59.

The local option law does not violate this section, and is such a law as this section authorizes. *Ex parte Lynn*, 19 Cr. App., 293.

Under a law providing that when the sale of intoxicating liquors has been prohibited, that the repeal of the prohibition shall not exempt from punishment any person who may have violated the law when it was in force, is not only authorized by this section. But this section makes it the duty of the legislature to pass such a law. *Ezell v. St.*, 29 Cr. App., 521.

Since this section gives the legislature the power to regulate the sale of liquors, it has the implied power to require a bond, as a condition precedent to the granting of license to sell liquors. *Ex parte Bell*, 24 Cr. App., 428.

This section does not mean that the legislature can not regulate the sale of liquors or control its traffic in any other way except by virtue of this article. *Ex parte Sundstrom*, 25 Cr. App., 159.

The legislature may provide for a vote to determine whether the sale of liquors shall be prohibited, except for sacramental and medical purposes. *Bowman v. St.*, 38 Cr. App., 1, 40 S. W. R., 796.

In adopting the constitution and local option law, the object was to destroy liquor traffic and not interfere with religious usages. And R. S., Art. 3385, making exception as to sacramental and medical purposes, is constitutional. *Id.*

Medicated bitters, producing intoxication, are intoxicating liquors, within the meaning of this section. *James v. St.*, 21 Cr. App., 355, 17 S. W. R., 422; *Dillard v. St.*, 31 Cr. App., 67, 20 S. W. R., 1107.

This section is not self executing, entitling a city to a mandamus, to compel the commissioners court to order an election in the absence of legislation therefor. *Adams v. Kelley*, 45 S. W. R., 859, 44 S. W. R., 529.

The object of this section discussed and stated. *Id.* *St. v. Harvey*, 33 S. W. R., 885.

A county election held under a law, passed in accordance with this section, resulting in favor of prohibition, includes all precincts in the county, whether or not the vote, in such precincts, resulted in favor of prohibition. *Ex parte Fields*, 46 S. W. R., 1127; *Kimberly v. Morris*, 31 S. W. R., 809; *St. v. Harvey*, 33 S. W. R., 885; *Adams v. Kelley*, 44 S. W. R., 529.

This section excludes any other method to be pursued than the one named in it. *Ex parte Brown*, 42 S. W. R., 554; *Steele v. St.*, 19 Cr. App., 425; *Ninegar v. St.*, 25 Cr. App., 449, 8 S. W. R., 480.

The cold storage act of the twenty-fifth legislature violates this section. *Ex parte Brown*, 42 S. W. R., 554.

Act of the fifteenth legislature in so far as it seeks to prohibit the gift of intoxicating liquors, violates this section. *Holley v. St.*, 14 Cr. App., 507.

This section not only confers the right, but makes it obligatory upon the legislature to pass an act enabling the people, by election, to adopt prohibition when they so desire. *Id.*

The legislature has no power to prohibit the gift of intoxicating liquors nor to empower localities to do so by election. *Stallworth v. St.*, 16 Cr. App., 345; *McMilan v. St.*, 18 Cr. App., 375; *Steele v. St.*, 19 Cr. App., 425.

This section contemplates that the authority to determine the question should be granted to justices or the peace precincts of a county to the same extent that it should be granted to a county. *Whisenhurst v. St.*, 18 S. W. R., 491.

SEC. 21. All stationery and printing, except proclamations and such printing as may be done at the deaf and dumb asylum, paper and fuel used in the legislative and other departments of the government, except the judicial department, shall be furnished and the printing and binding of the laws, journals and department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed

by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the governor, secretary of state and comptroller.

SEC. 22. The legislature shall have the power to pass such fence laws, applicable to any subdivision of the state or counties, as may be needed to meet the wants of the people.

SEC. 23. The legislature may pass laws for the regulation of live stock, and the protection of stock-raisers in the stock-raising portion of the state, and exempt from the operation of such laws other portions, sections or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides, and for the regulation of brands; *provided*, that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them before it shall go into effect.

This section authorizes the legislature to pass a law regulating live stock, making it applicable to the entire state, or it might have exempted any county or counties from its operation. *Armstrong v. Taylor*, 87 T., 598, 30 S. W. R., 440.

The legislature may authorize the voters to designate the boundaries of the subdivisions in which they

wish the law regarding live stock to be applied, or the legislature may pass a law not to be enforced in any county until adopted by the county. *Id.*

A city ordinance restraining cattle from running at large is not a law "for the regulation of live stock in the stock raising portion of the state" and does not have to be submitted to the freeholders for approval. *Batsel v. Blaine*, 15 S. W. R., 283.

The words "local" and "special" are here used in the same sense. *Lastro v. St.*, 3 Cr. App., 363.

Act of 1876, providing for the regulation of live stock raisers in the stock-raising portion of the state, is not a local law, although exempting many counties, and it was not necessary that it be submitted to the freeholders of any section for their approval. *Id.*

Laws of 1891, providing for the payment out of the county treasury bounties for the destruction of wolves and other wild animals are authorized by this section. *Weaver v. Scurry Co.*, 28 S. W. R., 836.

SEC. 24. The legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures and convict labor to all these purposes.

This section refers only to fines imposed as penalties for crimes and such as arise from forfeited bail bonds and does not include such as are allowed by statute to be recovered by citizens for injuries done to their rights. *Haud T. C. Ry. Co. v. Harry*, 63 T., 256.

This section directs the legislature to make provision for laying out and working public roads. *Vogt v. Bexar County*, 23 S. W. R., 1044.

SEC. 25. That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage,



storage, compressing, baling, repairing, or for any other kind of labor or service, of or to any cotton, grain or any other produce or article of commerce in this state, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent or middle man of any kind, not the true and absolute owner thereof, are forever prohibited, and it shall be the duty of the legislature to pass effective laws punishing all persons in this state who pay, receive, or contract for or respecting the same.

SEC. 26. Every person, corporation or company that may commit a homicide, through wilful act or omission or gross neglect, shall be responsible in exemplary damages to the serving husband, wife, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

This section does not apply to cases in which no right can be had for actual damages. *Ritz v. City of Austin*, 20 S. W. R., 1029.

This section provides for the recovery of exemplary damages, though the act, on which the action is based, is a crime of a high degree. *Hand T. C. v. Harry*, 63 T., 257.

A city can not, by its charter, exempt itself from liability for negligence. *Peacock v. City of Dallas*, 35 S. W. R., 8, 89 T., 438.

Recovery of exemplary damages for death, is limited to that class of persons, specified in this section. And a parent can not recover exemplary damages for the death of his son, "as heir of his body." *H. & T. C. v. Cowser*, 57 T., 293; *G. C. & S. F. v. Comp-*



ton, 75 T., 667; H. & T. C. v. Baker, 57 T., 419; Winnt v. I. & G. N., 74 T., 32, 11 S. W. R., 907.

The omission or act must be that of an officer of the corporation and not its servant. *Id.*, I. & G. N. v. McDonald, 75 T., 41, 12 S. W. R., 861.

SEC. 27. In all elections to fill vacancies of office in this state, it shall be to fill the unexpired term only.

SEC. 28. No current wages for personal service shall ever be subject to garnishment.

The word "current" means "running" now passing or present in its progress. *First National Bank of Cleburne v. Graham*, 3 App. C. C., Sec. 462, 22 S. W. R. 1101.

Attorney's fees are not ordinary current wages. *Id.*

Pay of a physician for services is current wages. *Railway Co. v. Whipsker*, 77 T., 14, 13 S. W. R., 639.

Money due a physician, under a contract to treat city patients, does not cease to be current wages, because not demanded until he completes his services, or because he leaves it with the city for a few days, he refusing to accept less than the whole. *Sydney v. City of Galveston*, 15 S. W. R., 202.

Past due wages, left with employer, because the employee can not collect it from him, continues to be current wages. *Davidson v. Chair Co.*, 41 S. W. R., 224.

Past due wages left voluntarily with employer, ceases to be current wages. *Id.*

Exemption from garnishment, given by this section, is not limited to the residents of the state. *Bell v. Live Stock Co.*, 11 S. W. R., 344.

Amount due a person for services, under a contract by which he agrees to nurse another during an attack of sickness, and the latter agreeing to pay him, is exempt, though neither the compensation nor time is fixed. *Dempsey v. McKennell*, 23 S. W. R., 525.

SEC. 29. The legislature shall provide by law for defining and punishing barratry.

[Declared adopted December 22, 1894.]

SEC. 30. The duration of all offices not fixed by the constitution shall never exceed two years; provided, that when a railroad commission is created by law it shall be composed of three commissioners, who shall be elected by the people at a general election for state officers, and their terms of office shall be six years; provided, railroad commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, one four years and one six years, their terms to be decided by lot immediately after they shall have qualified. And one railroad commissioner shall be elected every two years thereafter. In case of vacancy in said office, the governor of the state shall fill said vacancy by appointment until the next general election.

The act of March 30, 1899, providing for the election of school trustee and fixing his term of office at four years, violates this section. *Rowan v. King*, 55 S. W. R., 123.

Under this section and section 1 of article 7, the legislature can not give a four year term to the office of school trustee created by it. *Kimbrough v. Barnette*, 55 S. W. R., 120.<sup>1</sup>

The legislature has no power to extend the term of office beyond the period fixed by the constitution. *St. v. Catlin*, 84 T., 52, 19 S. W. R., 302.

<sup>1</sup> See Art. 7, Sec. 1.

When the duration of an office, filled by popular election, is a doubtful one, it should be given the shortest time. *Wright v. Adams*, 45 T., 134.

This section does not limit the term of lawyers to two years, their office is for life. *Ex parte Williams*, 31 Cr. App., 261, 20 S. W. R., 580.

SEC. 31. The legislature may pass laws prescribing the qualifications of practitioners of medicine in this state, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

A law requiring board of examiners to be graduates of a medical college, recognized by an association composed exclusively of allopathic physicians and recognizing no other school of medicine is constitutional. *Dowel v. McBride*, 92 T., 239, 47 S. W. R., 524, 45 S. W., 397.

The act of 1876, regulating the practice of medicine, was authorized by this section. *Logan v. St.*, 5 Cr. App., 306.

This section enables the legislature to authorize and require each district judge, to appoint a board of medical examiners for his district. *Id.*

SEC. 32. The legislature may provide by law for the establishment of a board of health and vital statistics, under such rules and regulations as it may deem proper.

SEC. 33. The accounting officers of this state shall neither draw nor pay a warrant upon the treas-

ury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this state or the United States, except as prescribed in this constitution.

SEC. 34. The legislature shall pass laws authorizing the governor to lease or sell to the government of the United States a sufficient quantity of the public domain of the state necessary for the erection of forts, barracks, arsenals, and military stations or camps, and for other needful military purposes; and the action of the governor therein shall be subject to the approval of the legislature.

SEC. 35. The legislature shall, at its first session, pass laws to protect laborers on public buildings, streets, roads, railroads, canals and other similar public works, against the failure of contractors and subcontractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done, responsible for their ultimate payment.

This section did not give to laborers on railroads, a lien on the property of the company, on which they worked, as is given to mechanics, etc., on buildings, by Sec. 37 of Art. 16. *Ry. Co. v. Henning*, 52 T., 467.

SEC. 36. The legislature shall, at its first session, provide for the payment or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools by the state, for service rendered prior to the 1st day of July, 1873, and for the payment by the school districts in the state of amounts justly due teachers of public schools by such district to January, 1876.

Section four of act of April 2nd, 1883, does not violate this section. *Parker v. Buckner*, 67 T., 21, 2 S. W. R., 746.

There is nothing in this section restricting the power of the legislature to limit, in a reasonable way, the time for claimants to avail themselves of any remedy, given by law to them, to collect their claims. *Id.*

SEC. 37. Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them, for the value of their labor done thereon, or material furnished therefor; and the legislature shall provide by law for the speedy and efficient enforcement of said liens.<sup>1</sup>

This section has reference to statutory liens, such as registration is necessary to enforce, and not to liens created by contract. *Lippencott v. York*, 86 T., 276, 24 S. W. R., 275.

One who has no title to land when he enters into a contract for the erection of a building thereon, but acquires title during the performance of the contract, is an owner, and one who furnishes labor or material

<sup>1</sup> The constitution of 1869 gave a lien to mechanics and artisans, but not to material men.

with such person, has a mechanic's lien. *Schultz v. Ice Brewing Co.*, 2 C. A., 236, 21 S. W. R., 160.

No mechanic's lien can arise under a contract to erect a building for one in possession of land with right to purchase it at a given time but who fails to completely purchase it. *Galveston Assn. v. Perkins*, 80 T., 62, 15 S. W. R., 633. *Sheer v. Cummings*, 80 T., 294, 16 S. W. R., 37.

A material man furnishing lumber to a subcontractor to construct a building under contract with the owner, had a lien upon the lot on which the building was erected. *Bassett v. Mills*, 89 T., 162, 34 S. W. R., 93.

The power of the legislature granted by the constitution to provide for the enforcement of said lien, neither implies nor includes a power to destroy the right. *Wood v. Amarillo*, 88 T., 505, 31 S. W. R., 503.

Mechanic's lien exists without filing the contract or account, as directed by statute, and is effective against the owner, and is superior to a mortgage given for money during the progress of the work. *F. M. Nat. Bank v. Taylor*, 91 T., 78, 40 S. W. R., 966.

This lien is not waived by taking from the owner a note and a mortgage on property for the amount. Nor is the lien waived by suing on the note and mortgage without claiming the lien, except where there is an agreement or intention to waive it. *Id.*

This lien exists independent of statute, and the constitution by implication gives a lien on the land on which the building is situated. *Strong v. Pray*, 89 T., 525, 35 S. W. R., 1054.

To secure a mechanic's lien created by the constitution, the person claiming the lien need not register his contract when the control or possession of the writing is in another. *Warner Elevator Co. v. Mazerick*, 88 T., 489, 31 S. W. R., 353-499.

Lien of a person furnishing material can not be defeated because it is delivered according to wish of



owner of house at some other place than where the house was erected. *Trammel v. Mount*, 68 T., 210, 4 S. W. R., 377.

A mechanic's lien can not be established against the owner of land without his knowledge or consent. *Sheer v. Cummings*, 80 T., 294.

The constitution creates a lien and only leaves it to the legislature to provide for its enforcement. *Keating Implement Co. v. Marshall Electric Power Co.*, 74 T., 605, 12 S. W. R., 489; *Lee v. Phelps*, 54 T., 369.

Mechanic's lien exists before registration—registration merely preserves the lien. *Id.*

As between the parties a contract for lien on homestead for work and material gives a lien without record of the same. *Lignoski v. Crooker*, 86 T., 324, 24 S. W. R., 278.

Lien on building for labor and material is superior to all other liens. *Hotel Co. v. Griffith*, 88 T., 574, 33 S. W. R., 652.

Where material is furnished under one contract for building to be erected on contiguous lots, owned by the same person, the lien will attach to all the lots without regard to amount of material used on each. *Lyon v. Logan*, 68 T., 521, 5 S. W. R., 72; *Trammel v. Mount*, 68 T., 210, 4 S. W. R., 377.

For construction of constitution and statute together see *Houston v. Meyers*, 88 T., 129.

The constitution does not give a mechanic's lien on a railroad so as to include its roadbed and franchise for materials furnished or labor done. *Tyler Tapp Ry. Co. v. Driscoll*, 52 T., 13.

The constitution does not give a subcontractor a lien for the construction of a house. *Horan v. Frank*, 51 T., 401.

An original contractor, who performs labor and furnishes material, is entitled to a lien though he does not record his contract as provided by law. *Bank v. Taylor*, 40 S. W. R., 876 and 966.



A contract between a material man and the owner of land, to furnish lumber for a house to be built on the land, is sufficient to give lien under this section. *Powers Lumber Co. v. Wade*, 39 S. W. R., 158.

A failure of a material man to comply with the requirements of the statute defeats his lien claim under the constitution. *Berry v. McAdams*, 55 S. W. R., 1112.

SEC. 38. The legislature may, at such time as the public interest may require, provide for the office of commissioner of insurance, statistics and history, whose term of office, duties and salary shall be prescribed by law.

SEC. 39. The legislature may, from time to time, make appropriations for preparing and perpetuating memorials of the history of Texas, by means of monuments, statutes, printings and documents of historical value.

SEC. 40. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of the peace, county commissioner, notary public and postmaster, unless otherwise specially provided herein.

The acceptance by the secretary of a city of the office of recorder and his qualifications thereunder operates *ipso facto* as a resignation of the former office. State v. Brinkerhoff, 66 T., 45, 17 S. W. R., 109; Alsup v. Jordon, 69 T., 300, 6 S. W. R., 831.

If an incumbent of an office is appointed to another which is incompatible with his office, his acceptance of and qualifications for the latter office vacates the former office. Ex parte Call, 2 Cr. App., 497; Biencourt v. Parker, 27 T., 558.

A member of the legislature can act as a special judge. Roundtree v. Gibray, 57 T., 179.

This section does not prohibit justice of the peace, county commissioners, notary publics and postmasters from exercising any other office. Gaal v. Townsend, 77 T., 464, 14 S. W. R., 365.

The office of mayor of a town and county commissioners are not incombable. Id.

The office of mayor of the City of Austin can not legally be held by one who at the same time continues to be an officer of the U. S. army on the retired list; such an officer holds an office of emoulements in contemplation of this section. State v. Degress, 53 T., 387.

SEC. 41. Any person who shall, directly or indirectly, offer, give or promise any money or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of the legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery and be punished in such manner as shall be provided by law. And any member of the legislature, or executive or judicial officer who shall solicit, demand

or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage, matter or thing aforesaid for another as the consideration of his vote or official influence in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery within the meaning of the constitution, and shall incur the disabilities provided for said offenses with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

SEC. 42. The legislature may establish an inebriate asylum for the cure of drunkenness and reform of inebriates.

SEC. 43. No man or set of men shall be exempted, relieved or discharged from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such

public duty or service shall only be made by general law.

SEC. 44. The legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this state, of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years and until their successors are qualified, and shall have such compensation as may be provided by law.

Under this section creating the office of county treasurer and authorizing the legislature to prescribe his duties, and under an act which defined his duties and gave him custody of the county fund, it held that county commissioners court cannot deprive the treasury of his rights to receive and disburse the funds. *Bastrop County v. Hearne*, 70 T., 563, 8 S. W. R., 302; *Beard v. City of Decatur*, 64 T., 7.

SEC. 45. It shall be the duty of the legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence and other documents, civil and military, relating to the history of Texas, as may be now in the possession of parties willing to confide them to the care and preservation of the state.

SEC. 46. The legislature shall provide by law for organizing and disciplining the militia of the state, in

such manner as they shall deem expedient, not incompatible with the constitution and the laws of the United States.

SEC. 47. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

SEC. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the constitution of the United States or to this constitution, shall continue and remain in force as the laws of this state until they expire by their own limitation, or shall be amended or repealed by the legislature.

The constitution of 1869 was wholly superseded by the constitution of 1876, which abrogated the provision of the former (Art. 5, Sec. 8) giving juries power to substitute imprisonment for life in lieu of death. And that provision was a law within the meaning of this section of this constitution which retained in force "all laws or parts of laws not repugnant to the laws or the constitution of the state and of the United States." *Cox. v. St.*, 8 Cr. App., 255.

This constitution superseding the one of 1869, abrogated the provision of the latter giving juries right to substitute imprisonment for death, but it retained in force the statutory punishment, which was death. *Hunt v. St.*, 7 Cr. App., 212.

If the murder was committed before the constitution of 1876 was adopted, but the trial is had after the adoption, the defendant has the right of the alternative

penalty prescribed in the constitution of 1869. *Murray v. St.*, 1 Cr. App., 417.

This section making void all laws or parts of law, which are repugnant to the constitution, and Art. 5, Sec. 1, naming the courts, abrogated all other courts and their laws then existing, excepting the courts of Galveston and Harris counties (which are expressly named). *Long v. St.*, 1 Cr. App., 713.

SEC. 49. The legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

A forced sale includes every sale under the process of the courts, in the mode prescribed by law. 1 App. C. C., Sec. 1340. *Simpson v. Williamson*, 6 T., 110.

The part of the R. S. passed in pursuance of this section exempting from forced sale "all provisions and forage on land for home consumption" does not contemplate that gathered crops, merely because they have been grown upon homestead, should be exempt. *Coates v. Caldwell*, 8 S. W. R., 922.

SEC. 50. The homestead of a family shall be and is hereby protected from forced sale, for the payment of all debts, except for the purchase money thereof, or a part of such purchase money, the taxes due thereon or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is

required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

#### INTENT.

Actual use is the best evidence of intention. *Ruhl v. Kauffman*, 65 T., 734.

Mere intention to use land as homestead is not sufficient. *Brooks v. Chatman*, 57 T., 33; *Stark v. Ingram*, 2 U. C., 636; *Fort v. Powell*, 59 T., 322.

Husband can designate which of two places shall be the homestead. *McDaniel v. Ragsdale*, 71 T., 26, 8 S. W. R., 625.

Living upon less than 200 acres is a sufficient designation of that tract as a homestead, although the head of the family owns other property. *Coates v. Caldwell*, 71 T., 21, 8 S. W. R., 922.

Intent to make a lot a homestead is not sufficient. *Bente v. Longe*, 29 S. W. R., 813, 9 C. A., 328.

Secret intent is not sufficient. *Collier v. Betterton*, 8 C. A., 479, 29 S. W. R., 490.

Nor is intention to use the place when the old homestead is abandoned, sufficient. *Allen v. Whitaker*, 27 S. W. R., 507.

If one purchases land with a declared intent to



make it his homestead, but can not take possession on account of an unexpired lease, can claim it as a homestead. *Gardner v. Douglass*, 64 T., 78.

A party can not, after an execution has been issued on the land, move upon it and defeat the title of the purchaser. *Fort v. Powell*, 59 T., 321.

In determining whether it is a homestead or not, declarations made by the husband to wife at the time he purchased the property of his intention to make it his homestead, are admissible. *Gardner v. Douglass*, 64 T., 78.

Intent together with acts showing purpose to make a homestead is sufficient. *Cameron v. Gebhart*, 85 T., 614, 22 S. W. R., 1033.

Before the exemption can be claimed, there must be a home upon the land, or such acts as will prove a fixed intention to select and use the place as a homestead. *Brooks v. Chatman*, 57 T., 631; *Conley v. Ry. Co.*, 44 T., 580; *Barnes v. White*, 53 T., 631; (*Anderson v. McKay*, 30 T., 190; *Phileo v. Smalley*, 23 T., 502; *Trammel v. Trammel*, 20 T., 417).

If there is an intent, notice should be given. *Wolf v. Butler*, 8 C. A., 468.

The mere fact that a mechanic is hired to build a house upon land not previously occupied, does not give him notice that the place is intended as a homestead. *Swope v. Stantzenberger*, 59 T., 390.

An express intent, together with preparation followed by actual occupancy, will exempt the property. *Van Ratcliff v. Call*, 72 T., 494, 10 S. W. R., 578.

Designation of property as homestead evidenced by acts of preparations will protect homestead. *Kempner v. Comer*, 73 T., 203, 11 S. W. R., 196.

In the absence of a previous occupancy, there must be a present *bona fide* intention to use the property as a homestead, together with acts of preparation as will give notice of the intention to use the property as a homestead. *Barnes v. White*, 53 T., 631; (*Frauklin v. Coffee*, 18 T., 417).

Every circumstance, including building and occupancy of homestead after sale, must be considered. *Gallagher v. Keller*, 87 T., 472, 29 S. W. R., 647.

See *Dobkins v. Kuykendall*, 81 T., 180, 16 S. W. R., 743. Where parties had selected a place for a homestead and started to build; being unable to complete it they rented land elsewhere, family separated, husband and wife parted, the children returning to the land formerly designated. Held they could claim it as their homestead.

The intent to appropriate a homestead should be evidenced by some unmistakable facts, showing intention to carry out such intent. *Moreland v. Barnhart*, 44 T., 275.

Where a married man owning no other property, bought lots with intention to build, bought several articles for the house, graded the street around it, etc., but was unable to build for two years; held the homestead right attached from the beginning of and a sale under execution levied before the house was built, conveys no title. *King v. Wright*, 38 S. W. R., 530.

Vacant lots possess homestead character when there is an intention and preparation to use them as a home. *King v. Wright*, 38 S. W. R., 530; *Gallagher v. Keller*, 87 T., 472, 29 S. W. R., 647; *Cameron v. Gebhart*, 85 T., 610, 22 S. W. R. 1033.

Where a family are enjoying homestead rights in a home, the right will not attach to lands purchased and improved, with an intention to use it as a residence at some future time. *Bray v. Aikin*, 60 T., 688.

#### LIENS VALID.

Deed of trust upon homestead by surviving husband and minor children after wife's death is not void. *Lacy v. Rollins*, 74 T., 566, 12 S. W. R., 314; *Smith v. Von Hutton*, 75 T., 625, 13 S. W. R., 18; *Harle v. Richards*, 78 T., 80, 14 S. W. R., 257; *Bateman v. Poole*, 84 T., 407, 19 S. W. R., 552; *Hensel v. Loan Co.*, 85 T., 220, 20 S. W. R., 116; *Kilgore v. Graves*, App. C.

C., Sec. 412; *Hiolbassa v. Raly*, 1 C. A., 169, 23 S. W. R., 253.

To secure payment for labor and material in constructing improvements upon homestead, husband and wife may execute deed of trust or mortgage or other lien upon the homestead. *Watkins v. Spoul*, 8 C. A., 427, 28 S. W. R., 356; *Lippencott v. York*, 86 T., 276, 24 S. W. R., 275; *Bosely v. Pease*, 86 T., 292, 24 S. W. R., 279; *Lignoski v. Crooker* 86 T., 324, 24 S. W. R., 278-788; *Loan Co. v. Paschal*, 34 S. W. R., 1000, 12 C. A., 513.

Formerly a mortgage on homestead attached to it immediately on the death of the owner, no member of the family surviving, though such is not the rule now. *Duke v. Reed*, 64 T., 705; *Inge v. Cain*, 65 T., 77; (*Lee v. Kingsbury*, 13 T., 68; *Stewart v. Machey*, 16 T., 56).

The constitution of 1845 and 1869 did not prevent the husband and wife from encumbering the homestead. *Inge v. Cain*, 65 T., 77.

A lien acquired on the homestead prior to the adoption of the constitution was valid and could not be divested by the adoption of the constitution. *Eylar v. Eylar*, 60 T., 321.

Prior to the constitution a deed of trust could be made on the homestead as a security for an indebtedness other than the purchase money. *Arto v. Maydole*, 54 T., 246; (*Jordan v. Peak*, 38 T., 439).

An unmarried man, although head of a family, may mortgage the homestead and the mortgage will pass title. *Smith v. Von Hutton*, 75 T., 626, 13 S. W. R., 18; *Lacy v. Rollins*, 74 T., 569, 12 S. W. R., 314; *Astugeville v. Loustauno*, 61 T., 234; *Davis v. Converse*, 45 S. W. R., 910; *Bateman v. Pool*, 84 T., 405, 19 S. W. R., 512; *Hensel v. Bld. Co.*, 85 T., 212, 20 S. W. R., 116; *Rice v. Mort. Co.*, 30 S. W. R., 74; *Harle v. Richards*, 78 T., 80, 14 S. W. R., 257; *Watson v. Miller*, 76 T., 13, 13 S. W. R., 16.

The restriction of a married man from selling homestead refers also to that which is part of the homestead. *House v. Phelan*, 83 T., 595, 19 S. W. R., 140.

A homestead is subject to forced sale to satisfy all liens which accrued before the homestead was established. *Clements v. Lacy*, 51 T., 159; *McGarty v. Breckenbridge*, 1 C. A., 80, 20 S. W. R., 997; *Mort. Co. v. Lloyd*, 11 C. A., 449, 33 S. W. R., 751.

If a lien has once attached, no subsequent acts or assertion of homestead can defeat the lien. *Kemper v. Comer*, 73 T., 203, 11 S. W. R., 194; *Baker v. Collin*, 4 C. A., 520, 23 S. W. R., 493.

A judgment lien has precedence of a subsequent acquired homestead. *Hand G. N. Ry. Co. v. Winter*, 44 T., 615; *George v. Neblet*, 57 T., 374; *Wright v. Straub*, 64 T., 66; *Mort. Co. v. Lloyd*, 33 S. W. R., 751.

Where an attachment lien has been acquired the owner cannot defeat it by subsequently making the land his homestead. *Baird v. Trice*, 51 T., 561; (*Tuttle v. Turner*, 28 T., 773).

Parties can not defeat an attachment lien by a subsequent designation of the homestead. *Brooks v. Chatman*, 57 T., 34; *Baird v. Trice*, 51 T., 559; *Mabry v. Harrison*, 44 T., 294; *Chapman v. McKinney*, 41 T., 77; (*Potnisky v. Krempkan*, 26 T., 309).

Where a homestead has been established by a debtor on a tract exceeding two hundred acres, but had not been designated at the time of the levy of an attachment upon the entire tract, does not affect the validity of the levy, when the judgment foreclosing the attachment lien respects the homestead and provides for its designation. *Parker v. Coop*, 60 T., 111.

Homestead right acquired after the execution of a deed of trust, but before the making of a new one on the same property, to secure to a third party the repayment of money advanced to satisfy the lien, derives no protection from the constitution, but is subordinate to

the subrogated lien of such said party. *Dillon v. Kauffman*, 58 T., 696.

No homestead right can attach as against a deed of trust, which was executed by one who purchased the land at sheriff sale, and borrowed the money to pay for it, executing a deed of trust on the land at the same time with sheriff's deed, the trust deed reciting that the land was not his homestead. *Devine v. Elliott*, 60 T., 340.

Where a deed conveying land by its terms, reserves a lien upon the property to secure the payment of a specific sum of money, no homestead right in the property can be acquired by the purchaser as against the lien, though the sum named constitutes no part of the purchase money proper. *Berry v. Boggess*, 62 T., 239.

Property, upon losing its homestead character, becomes subject to a judgment lien, an abstract of which has been recorded, although at the time of recording it, no lien attached, on account of the homestead exemption. *Marks v. Bell*, 10 C. A., 587, 31 S. W. R., 699.

A contract lien for improvements on homestead, conferred by this section, is superior to right of wife and children in the property of the deceased. *Heatherby v. Little*, 41 S. W. R., 79; *Shumate v. Champion*, 39 S. W. R., 129; affirmed, 39 S. W. R., 362, 90 T., 597; rehearing denied, 40 S. W. R., 394, 90 T., 601.

Where a person contracts to furnish labor and material, and takes the party's notes, sells them to a Loan Company, and a trust deed is executed to secure their payment, held Loan Company has a lien on homestead. *Downard v. Loan Co.*, 55 S. W. R., 98; *Loan Co. v. Edwards*, 34 S. W. R., 192; *Walters v. Assn.*, 29 S. W. R., 51; *Luzenberg v. Assn.*, 29 S. W. R., 1001; *Bank v. Campbell*, 46 S. W. R., 845; *Assn. v. Everhart*, 44 S. W. R., 885.

A contract executed and acknowledged after the



material is furnished does not give lien. *Taylor v. Huck*, 65 T., 238.

A lien on homestead for improvements may be given by express contract, or it may be implied—the statutory and constitutional grounds for mechanic's lien. *Martin v. Roberts*, 57 T., 568; *Taylor v. Huck*, 65 T., 241; *Claes v. Assn.*, 83 T., 53; *Lippencott v. York*, 86 T., 283, 24 S. W. R., 275.

Mortgage on homestead by husband to wife is void. *Madden v. Madden*, 79 T., 295, 15 S. W. R., 480.

Attachment levied on homestead is void, and does not prevent husband and wife from selling it. *Mayer v. Paxton*, 78 T., 1999, 14 S. W. R., 568.

No homestead right can be held against one holding lien on the land. *Sanger v. Moody*, 60 T., 27; *Dillion v. Kauffman*, 58 T., 706; *Black v. Rockmore*, 50 T., 98; (*McManus v. Campbell*, 37 T., 268; *Burford v. Rosenfield*, 37 T., 46).

One can not fix a lien upon a business homestead by an attachment. *Willis v. Mike*, 76 T., 83, 13 S. W. R., 58.

If one who loaned the money is cognizant of the fact that are resorted to encumber the homestead, he will not be protected from its exemption. *Hurt v. Cooper*, 63 T., 365.

The joint action of husband and wife can not create a lien upon the homestead. *Freeman v. Hamblin*, 1 C. A., 162, 21 S. W. R., 1019.

Where a defendant in execution, having no other homestead, builds and moves upon the land after the execution was levied, and occupies it as his homestead at the time of the sale, can claim it as his homestead, notwithstanding the lien created by the levy. *Baird v. Trice*, 51 T., 559; (*Stone v. Darnell*, 20 T., 15, overruled).

## LIENS NOT VALID.

No lien on the homestead is valid, except for the purchase money. *Campbell v. Elliott*, 52 T., 159; *Luge. v. Cain*, 65 T., 79; *Goff v. Gones*, 70 T., 577, 8 S. W. R., 525-575; *Mortg. Co. v. Norton*, 71 T., 689, 10 S. W. R., 301.

Husband and wife may encumber homestead with a lien to secure payment for labor and material put on improvements on the home. *Lippencott v. York*, 86 T., 276, 24 S. W. R., 275.

The lien must be given before the improvements are put upon the home. *Lignoski v. Crooker*, 86 T., 328, 24 S. W. R., 278.

A special assessment against a homestead for street paving is not a tax for which the home is liable. *Loevenberg v. City of Galveston*, 42 S. W. R., 1024.

A special assessment against the homestead for sidewalk is not a tax within the meaning of this section. *Higgins v. Bardages*, 88 T., 460, 31 S. W. R., 52, 803. (*Lufkin v. City of Galveston*, 58 T., 549, overruled).

In the absence of legislature declaring the only mode in which a lien on homestead may be given, it may be given in the contract providing for the work and material, properly executed as in the case of sale. *Lippencott v. York*, 86 T., 276, 24 S. W. R., 275.

For work done and material furnished, contract must be in writing, wife consents as in making a conveyance, and be made before work is done or material furnished. *Barnes v. White*, 53 T., 628.

Homestead is not exempt against purchase money. *Ray v. Clark*, 75 T., 29, 12 S. W. R., 845.

A levy on homestead is a nullity, and a subsequent abandonment does not give it validity. *Meyer v. Paxton*, 4 C. A., 29, 23 S. W. R., 284.

Homestead not liable for attorney fees. *Waters v. Loan Association*, 8 C. A., 500, 29 S. W. R., 51.



The right of a lien holder is only to the excess in value, if there is any, after husband's death. *McLane v. Paschal*, 74 T., 24, 11 S. W. R., 837.

Under the constitutions of 1845 and 1869, the homestead was not subject to forced sale. *Inge v. Cain*, 65 T., 77.

The homestead is free from execution and cannot be mortgaged by the owner. *Hargadene v. Whirfield*, 71 T., 488, 9 S. W. R., 475.

No lien attaches where an absolute deed is made by the husband and wife for a homestead, and is reconveyed by them by a deed reserving a lien for the purchase money, the object being to secure a loan. *O'Shaughnessy v. Moore*, 73 T., 111, 11 S. W. R., 153.

See facts where it was held that a transaction was a mortgage on homestead, and, hence, void. *Moore v. Wills*, 69 T., 11, 5 S. W. R., 675; *Gray v. Shelby*, 83 T., 407, 18 S. W. R. 809; *Marx v. Baker*, 10 C.A., 148, 29 S. W. R., 908.

A deed of trust can not by its recitals bind a homestead. *Mortgage Co. v. Norton*, 71 T., 689, 10 S. W. R., 301.

A lender of money, for the purpose of acquiring a homestead, has no lien on the homestead unless there is an agreement to that effect. *Ruhl v. Kauffman*, 65 T., 723; *McCarty v. Brokenridge*, 20 S. W. R., 997, 1 C. A., 180.

Homestead of a married woman cannot be mortgaged. *Texas Land Co. v. Blalock*, 76 T., 89, 13 S. W. R., 12.

A mortgage on a homestead is not valid, although there are other considerations than the securing of a debt. *Marx v. Baker*, 29 S. W. R., 908, 10 C. A., 148.

A power of attorney to sell homestead, without acknowledgment according to law, does not authorize the sale of the homestead. *Jones v. Robbins*, 74 T., 615, 12 S. W. R., 824.

The privy acknowledgment of a wife cannot cure the invalidity of a trust deed for a loan on the home-

stead. *Mortgage Co. v. Norton*, 71 T., 689, 10 S. W. R., 301.

A power of attorney to sell homestead, acknowledged by wife according to law, is binding. *Warren v. Jones*, 69 T., 462, 6 S. W. R., 775.

All pretended sales on the homestead are void. *Jones v. Goff*, 63 T., 248.

Homestead cannot be made the subject of an executory contract for its sale by the husband and wife. *Id.*

Mortgage upon homestead is void, and the parties cannot by acquisition of another give it validity. *Hays v. Hays*, 66 T., 608, 1 S. W. R., 195.

Under the constitution of 1845 a lien upon the homestead which could only be effective through a forced sale, was not only void voidable but inoperative. *Inge v. Cain*, 75 T., 75; (*Sampson v. Williamson*, 6 T., 102). If the lien could be foreclosed without a forced sale it was valid and effective. *Bomback v. Sykes*, 24 T., 217.

The constitution of 1869 was similar to the one in 1845 in this respect. *Inge v. Cain*, 65 T., 75; *Jordan v. Peak*, 38 T., 429; *Petty v. Barrett*, 37 T., 84.

#### FORCED SALES.

This section exempt the homestead from forced sales. *Childers v. Henderson*, 76 T., 667.<sup>1</sup>

An owner of land can not withdraw it from being sold, under execution, by consenting to its occupancy as a homestead by another. *Smith v. Chenault*, 48 T., 462.

A sale under an execution against a deceased person, he being alive when the judgment was rendered, is void. *Hooper v. Caruthers*, 78 T., 432, 15 S. W. R., 98.

A sale under an attachment against the homestead

<sup>1</sup> Under the constitution of 1845 a forced sale of the homestead was absolutely void. *Thompson v. Jones*, 77 T., 628, 14 S. W. R., 222; *Thompson v. Jones*, 60 T., 95; *Campbell v. Elliot*, 52 T., 160.

is void. *Mayers v. Paxton*, 78 T., 196, 14 S. W. R., 568; *Willis v. Matthews*, 48 T., 478.

Two days occupancy with an intention of making it a homestead will protect it from forced sale, although the purchaser has no notice of its former occupancy, provided there has been no intention of abandonment. *Parr v. Newby*, 73 T., 468, 11 S. W. R., 490.

A homestead is not subject to a forced sale because it exceeds the prescribed value. *Hargadene v. Whitefield*, 71 T., 490, 9 S. W. R., 475; *Beard v. Blum*, 64 T., 63.

There can be no forced sale for work and material, unless the contract be signed and acknowledged by the wife. *Barnes v. White*, 53 T., 630.

The homestead is exempt from forced sale for taxes on other property; it can only be made to respond for its own taxes. *Wright v. Straub*, 64 T., 64.

Neither the value of the improvements, nor the extent and nature of the operations carried on there, subject it to forced sale. *Willis v. Morris*, 66 T., 634, 1 S. W. R., 799.

An abandoned homestead is subject to execution if another one is acquired. *Russell v. Nall*, 2 C. A., 62, 20 S. W. R., 1006, 23 S. W. R., 901.

A widower, in consideration of a renewal of a purchase money note which constitutes a lien on his homestead, may extend the lien to the entire tract. *Stocker v. Patten*, 35 S. W. R., 64.

Because one who asserts homestead has failed to designate the boundaries, does not authorize a forced sale. *Jenkins v. Voltz*, 54 T., 639.

Where the owner of a building rents the lower front part, and lives in the rear and second story, the whole building is exempt as his homestead. *Ford v. Forsgard*, 87 T., 185, 27 S. W. R., 57.

Under a forced sale to subject the excess to the payment of debts, only the excess is subject. *Cameron v. Fay*, 55 T., 63; *Willis v. Matthews*, 46 T., 484;

(Wood v. Wheeler, 11 T., 123; Wood v. Wheeler, 7 T., 23).

The time of levying an execution, and not the time of sale, is the time to ascertain whether or not the place is a homestead. Baird v. Trice, 51 T., 559; (Stone v. Darnell, 20 T., 14; McManus v. Campbell, 37 T., 269, overruled).

An order of sale for 300 acres of land, including homestead for payments, of debts of an estate, is not a nullity because it includes a homestead, it may be erroneous. Wright v. McNatt, 49 T., 429.

A lathe part of the homestead when levy was made, can not be sold for taxes due on other property. House v. Phelan, 83 T., 597, 19 S. W. R., 140.

Where deed of trust is given upon homestead, the right of the lien holder is only to the excess of the homestead at the death of the husband. McLane v. Paschal, 74 T., 24, 11 S. W. R., 837.

A lien upon that part of a large tract of land which does not include the homestead, can not be defeated by a subsequent change of the boundaries of the homestead. Hand G. N. Ry. Co. v. Winter, 44 T., 615.

If money was loaned and the trust deed executed before the husband and wife asserted any homestead claim to and used the place for a home, the homestead right will not defeat the trust deed. Perregory v. Kottwitz, 54 T., 501.

Where an agent borrowed money on land, the legal title being in the principal, the agent giving a deed of trust to secure the loan, the wife of the agent cannot assert homestead right in the land as against the purchaser under the deed of trust. Ramey v. Miller, 51 T., 269.

If the owner of a homestead simulates a transaction in which a negotiable note would be secured by a valid lien on the property and their cunning succeeds in imposing upon an innocent third party, the parties are estopped from asserting homestead rights, and

the lien is valid. *Heidheimer v. Stewart*, 65 T., 2 23

Where money is loaned to pay off a balance due on homestead a subsequent mortgage given on the property to secure the amount is valid. *Hicks v. Morris*, 57 T., 665; *McCarty v. Brockenridge*, 1 C. A., 180, 20 S. W. R., 997.

But money borrowed to discharge lien for purchase money, but not so used, does not constitute a lien on the homestead and the homestead cannot be sold to satisfy the same. *Kolffman v. Ludenecker*, 9 C. A., 182, 28 S. W. R., 579.

#### SALES VOLUNTARY.

This section does not prohibit every sale of the homestead involving a condition of defeasance, it only prohibits pretended sales involving such conditions. *Hardie v. Campbell*, 63 T., 295; *Astugueville v. Lous-tauman*, 61 T., 240.

A contract that the seller can repurchase at the end of twelve months, is not a pretended sale of the homestead, which is prohibited by this section. *Eylar v. Eylar*, 60 T., 321.

If husband has given bond to convey the homestead, it will be enforced after the wife's death, no children surviving. *Eberling v. Dentscher*, 72 T., 342, 12 S. W. R., 205; *Goff v. Jones*, 70 T., 575, 8 S. W. R., 525; (*Primm v. Barton*, 18 T., 221; *Brewer v. Wall*, 23 T., 589; *Allison v. Shilling*, 27 T., 454; *Cross v. Everts*, 28 T., 534; *Wright v. Hayes*, 34 T., 261).

Homestead cannot be made subject of an executory contract of sale by husband and wife. *Jones v. Goff*, 63 T., 254.

#### VALID SALES.

Husband may in good faith convey the homestead for the payment of the purchase money. *Clements v. Lacy*, 51 T., 160; *Roy v. Clark*, 75 T., 32, 12 S. W.

R., 845; Archelhold v. Evans, 11 C. A., 138, 32 S. W. R., 705; Wort Co. v. Lloyd, 11 C. A., 449, 33 S. W. R., 750.

A voluntary conveyance of the business homestead passes to a superior title to that obtained by an attachment proceeding, the attachment being levied while the place was used as a place of business. Willis v. White 76 T., 84, 13 S. W. R., 58.

Husband and wife cannot sell homestead under power of attorney executed and acknowledged by them. Warren v. Jones, 69 T., 467, 6 S. W. R., 775; Jones v. Robbins, 74 T., 618, 12 S. W. R., 824.

Sale made under power of attorney will pass title if the property is abandoned at the time of executing the power of attorney. Jones v. Robbins, 74 T., 620, 12 S. W. R., 824.

• Where homestead is sold and vendor's lien notes taken and transferred, the homestead right is gone. De Hymel v. Mort. Co., 80 T., 494, 16 S. W. R., 311.

Husband cannot, under the guise of selling the homestead for payment of purchase money, fraudulent sell the homestead. Sherring v. Augustin, 11 C. A., 194, 32 S. W. R., 450.

If husband and wife are divorced and no disposition has been made of the homestead, the husband has a right to sell his interest. Kirkwood v. Domuan, 80 T., 648, 16 S. W. R., 428.

See Roy v. Clark, 75 T., 32, 12 S. W. R., 845, where it was held that a conveyance of homestead to one who paid the purchase money held good title against original purchasers in possession.

#### SALES NOT VALID.

A sale of homestead by the husband without the consent of the wife, is, as to her, void. Henderson v. Ford, 46 T., 632; Whetstone v. Coffee, 48 T., 272; Stalling v. Hellum, 25 S. W. R., 2; Freeman v. Hamblin, 1 C. A., 162, 21 S. W. R., 1019.

If the wife unwillingly leaves a homestead, and



no other is acquired, husband cannot sell the homestead. *Myers v. Evans*, 81 T., 318, 16 S. W. R., 1060. The fact that the husband has acquired another homestead does not alter the case. 2 U. C., 221.

A husband cannot subsequently ratify an imperfect conveyance of the homestead if the wife asserts her homestead rights against it. *Coker v. Roberts*, 71 T., 602, 9 S. W. R., 665.

An attempt to convey the homestead, the wife objecting, will not pass title. *Morris v. Giescke*, 60 T., 635; *Clements v. Lacy*, 51 T., 159.

A sale under a judgment, foreclosing mortgage on homestead, wife not being made a party, is void. *Thompson v. Jones*, 60 T., 95; *Campbell v. Elliott*, 52 T., 160.

Husband has no right to sell the homestead without the consent of the wife where only a small portion of the purchase money remained due. *Morris v. Giescke*, 60 T., 635.

Privy examination of wife is necessary to a valid conveyance of the homestead. 2 U. C., 193.

Husband cannot make a deed of assignment conveying the business homestead without the consent of the wife in legal form. *Inge v. Cain*, 65 T., 75; *Miller v. Menke*, 56 T., 539.

For a statement of facts where it was held that an assignment passed the business homestead, see *Fackaberry v. Bank*, 85 T., 491, 22 S. W. R., 151-299.

Wife may recover homestead sold by her and her husband, but not privily acknowledged by her, without refunding any of the purchase money except such as she received or was applied to the use of herself and family. *McFalls v. Brown*, 36 S. W. R., 1110.

A deed to homestead by husband, which the wife has unwillingly left, passes no title. *Myers v. Evans*, 81 T., 318, 16 S. W. R., 1060.

This rule applies although the husband has acquired another homestead. *Hubbard v. Bigham*, 2 U. C., 221.



Homestead of insolvent estate can not be sold under deed of trust, executed by husband and wife, after the husband's death. *Black v. Rockmore*, 50 T., 99; *McLane v. Paschal*, 47 T., 370.

Husband cannot by subsequent conveyance validate an imperfect conveyance. *Casker v. Roberts*, 71 T., 602, 9 S. W. R., 665.

Where small portion of the purchase money is due, husband can not sell it without being joined with his wife. *Morris v. Gieske*, 60 T., 635.

Husband can not sell homestead without wife's consent. *Irion v. Mills*, 41 T., 315; *Henderson v. Ford*, 46 T., 632; *Whetstone v. Coffee*, 48 T., 272; *Freeman v. Hamilton*, 1 C. A., 162, 21 S. W. R., 1019; *Stolling v. Kellum*, 35 S. W. R., 2.

#### FAMILY.

A mere contract between the parties will not constitute a family. There must exist a legal and moral obligation on the head of the family to support the other members and a corresponding state of dependence on the part of the others for their support. *Roco v. Green*, 50 T., 490; *Howard v. Marshall*, 48 T., 478.<sup>1</sup>

A mere collection of individuals does not constitute a family. *Whitehead v. Nicholson*, 48 T., 530; *Wolfe v. Buckley*, 52 T., 641.<sup>2</sup>

A man and a woman not married but living together, with their illegitimate children, do not constitute a family. *Lane v. Phillips*, 69 T., 240, 6 S. W. R., 610; *Gay v. Halton*, 75 T., 206, 12 S. W. R., 847.

A man with a widowed daughter and her children

1 Under the old constitutions the word "Family" meant the household, consisting of parents and children or relatives or servants. *Wilson v. Cochran*, 31 T., 680.

Under the old constitutions two single men constituted a family. *Hardman v. Herbert*, 11 T., 659.

2 The constitution of 1869 gave homestead rights to a family composed of husband, wife and children, but not to a family composed of persons not related by blood or marriage. *Howard v. Marshall*, 1148 T., 477; (*Jones v. Thompson*, 14 T., 466; *Trawick v. Harris*, 8 T., 314).

constitute a family. *Childers v. Henderson*, 76 T., 665, 13 S. W. R., 481.

A widower living with a son-in-law who pays rent does not constitute a family, and a mortgage on the home by the widower is valid. *Lacy v. Rollins*, 74 T., 548.

Hiring of a servant or helping to support persons who reside with a party does not constitute a family. *White v. Nicholson*, 48 T., 530.

A single man is not entitled to a homestead. *Howard v. Marshall*, 48 T., 481; *Broches v. Carroll*, 2 U. C., 145.

An old lady, together with depended grandchildren, constitute a family, although the children have no legal claim. *Wolf v. Buckley*, 52 T., 641.

If a child is adopted in good faith the relation of parent and child is created and they constitute a family. *Wolf v. Buckley*, 52 T., 649.

A servant of a testator can not claim a homestead against creditors. *Howard v. Marshall*, 48 T., 480.

Wife becomes head of the family when the husband leaves the state. *McDanell v. Pagsdale*, 71 T., 26, 8 S. W. R., 625; *Kelly v. Whitmore*, 41 T., 648.

As the older members of the family grow up and marry the legal relation of family as to those members ceases. *Roco v. Green*, 50 T., 491. (*Hoffman v. Newhouse*, 30 T., 636).

A granddaughter is not a member of her grandmother's family, so as to give her the homestead upon the death of her grandmother. *Phillips v. Price*, 34 S. W. R., 784.

A widow living with her orphan grandson and supporting him is the head of a family. *Smith v. Wright*, 13 C. A., 480, 36 S. W. R., 324.

A grandson of a divorced wife is not part of family. *Schwaryhoff v. Necker*, 1 U. C., 328.

A family consisting of a widower, his daughter and a female relative, is dissolved by the marriage of the daughter. *Whitehead v. Nickelson*, 48 T., 529.

A temporary and indefinite union of persons under one roof, directing their attention to one common object, does not constitute a family. *Id.*

An unmarried man owning property upon which he lives, with a depending sister and mother, can claim the homestead. *Barry v. Hale*, 2 C. A., 669, 21 S. W. R., 783.

A single man and child whom he had taken to raise, there being no statutory adoption and no natural, moral or legal obligation resting on the man, does not constitute a family. *Mullins v. Looke*, 8 C. A., 138, 27 S. W. R., 926.

A widower without children, living with his sister, she being supported by him, and she keeping house for him, constitute a family. *Farmer v. Hale*, 14 C. A., 73, 37 S. W. R., 164.

See facts which proved property in controversy was not homestead "of the family." *Linares v. De Linares*, 53 S. W. R., 579, (*Henderson v. Ford*, 46 T., 627; *Clements v. Lacy*, 51 T., 150, distinguished).

#### TENANCY IN COMMON.

Homestead may be established on property held by tenants in common. But it cannot prejudice the rights of the co-tenant. *Clements v. Lacy*, 51 T., 150; *Luhl v. Stone*, 65 T., 439; *Swearinger v. Bassett*, 65 T., 267.

The fact that the homestead is situated on lands, in which the claimant owns but an undivided half interest, does not destroy the homestead rights. *Id.* *Jenkins v. Voltz*, 54 T., 626; *Brown v. McLennan County*, 60 T., 43; *Lewis v. Sellick*, 69 T., 379.

If partition with other joint owners be impractical, the homestead right would attach and protect the proceeds of sale, made for partition, to the extent of the homestead. *Id.*

## INSURANCE MONEY.

Insurance money to any amount on the homestead is exempt. *Swayne v. Chase*, 88 T., 225, 15 S. W. R., 480; *Whitenberg v. Lloyd*, 49 T., 642; *Cameron v. Fay*, 55 T., 63; *Schneider v. Bray*, 59 T., 672; *Ins. Co. v. Jameson*, 6 C. A., 282, 25 S. W. R., 307.

## CROPS ON HOMESTEAD.

Crops grown on homestead are considered part of the homestead. *Alexander v. Holt*, 59 T., 205; *Coates v. Caldwell*, 1171 T., 198, 922 S. W. R., 922, 2 App. C. C., Sec. 423; (*Anderson v. McCay*, 30 T., 190; *Coombs v. Coleman*), 4 App. C. C., Sec. 147.

SEC. 51. The homestead not in a town or city shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots, not to exceed in value five thousand dollars at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

## GENERAL PRINCIPLES.

The right of homestead exists in a lease hold estate for a year or more. 4 App. C. C., Sec. 147; *Wheatley v. Griffin*, 60 T., 209.

The homestead right of the wife attaches to any interest in land which may be owned by the husband or wife, and used as a homestead. And such right will attach to any equitable estate, an estate for life or even a lease hold estate. *Wheatly v. Griffin*, 60 T., 209; *Scott v. Dyer*, 60 T., 137.

Homestead rights do not attach until the property is paid for. *DeBruhl v. Maas*, 54 T., 464; *Clements v. Lacy*, 51 T., 151.

Husbands can, where there is no intent to evade the law, without wife's consent, appropriate part of homestead lots and deprive them of their homestead character. *Wynne v. Hudson*, 66 T., 1, 17 S. W. R., 14.

A divorced wife cannot assert homestead rights in the homestead of her husband. *Hall v. Fields*, 81 T., 553, 17 S. W. R., 82; *Duke v. Reed*, 64 T., 713; *Bagn v. Starke*, 34 S. W. R., 103, 4 App. C. C., Sec. 85; *Sears v. Sears*, 45 T., 557.

A divorced husband occupying homestead decreed by a divorce can claim it as such. *Zapp v. Starhimer*, 75 T., 638, 13 S. W. R., 9.

This right exists although the children do not live with him. *Id.*

The words, "used for the purpose of a home" refer to lots other than those on which the family reside. *Axer v. Bassett*, 63 T., 545.

Mere ownership of lots will not constitute them a home. *Id.*

Disconnected lots, used for the purposes of revenue, are not a part of the homestead. *Evan v. Womack*, 48 T., 230.

In cases of disconnected lots, the law will not make the distinction between necessity and convenience, *Arto v. Maypole*, 54 T., 244.

There is no limit to the value of improvements on a homestead. *Swayne v. Chase*, 88 T., 225, 30 S. W. R., 1049, (29 S. W. R., 418, reversed).

The fact that a person, knowing himself to be insolvent, invests money in improvements on the home-

stead, to keep it from creditors, will not prevent the exemption of the homestead. *Id.*

Homestead laws should be construed literally. *Blackburn v. Knight*, 81 T., 1075; *Schneider v. Bray*, 59 T., 674.

This section of the constitution, enlarging the homestead exemption, can not have a retro-active application. *Linch v. Broad*, 70 T., 96, 6 S. W. R., 751.

#### ABANDONMENT.

The homestead can be divested of its exemption by the husband and wife voluntarily abandoning it with intent not to return. *Kempner v. Comer*, 73 T., 203, 11 S. W. R., 194; *Meyers v. Allen*, 81 T., 317, 16 S. W. R., 1060; *Mort. Co. v. Norton*, 71 T., 683, 10 S. W. R., 301; *Reece v. Renfro*, 68 T., 192, 4 S. W. R., 545.

Abandonment must be in good faith, accompanied by acts evidencing the same. *Medlenka v. Downing*, 59 T., 32.

If the abandonment is made in fraud of wife's rights, or to evade the prohibition against giving liens on it, the property is still part of the homestead; such an abandonment does not destroy the right. *Id.*

Where part of the homestead is sold, the residence included, the homestead right in the remaining tract is not divested until a new home is acquired. *Scott v. Dwyer*, 60 T., 135; (*Shepard v. Cassaday*, 20 T., 24; *Gouhenant v. Cockrell*, 20 T., 96).

Although when a citizen of this state leaves it and acquires another residence elsewhere, his former home is not exempt, yet its homestead character is not lost by the commencement of the abandonment; and where the heads of the family leave with intent to acquire another homestead, but leave their minor children to follow at a later date, the homestead exemption remains in their favor until the time contemplated for their removal. *Welborne v. Dowling*, 73 T., 528, 11 S. W. R., 501.



When a wife removes her domicile from this to another state, she relinquishes all homestead rights which she had as long as she was an inhabitant of Texas. *McElroy v. McGoffin*, 68 T., 208; *Smith v. Uzzell*, 56 T., 315; *Reece v. Renfro*, 68 T., 192.

Absence from the state, claiming a home in another state, is evidence of abandonment. *Morelin v. M. & L. Co.*, 29 S. W. R., 162, 9 C. A., 416.

Where one claiming homestead in Texas, voted in another state to which he had gone, it is evidence of abandonment, but not conclusive. *Graves v. Campbell*, 74 T., 576, 12 S. W. R., 239.

Long continued absence may be evidence of abandonment, but is not conclusive, if there is an intent to return. *Cline v. Upton*, 56 T., 319; *Thorn v. Dill*, 56 T., 145; *Smith v. Uzzell*, 56 T., 315.

An intention to leave a homestead and not return to it, if he can sell it and invest the proceeds in a home which will suit him better, will not operate as an abandonment. *Sanders v. Shern*, 66 T., 655, 2 S. W. R., 804.

Temporary leasing will not abandon homestead. *Hill v. Hill*, 85 T., 103, 19 S. W. R., 1016; *Blum v. Rogers*, 78 T., 531, 15 S. W. R., 115; *Newton v. Calhoun*, 68 T., 451, 4 S. W. R., 645.

The best evidence of abandonment is the acquisition of a new one. *Woolfork v. Rickets*, 41 T., 362; *Ogden v. Giddings*, 15 T., 486; *Shepard v. Cassaday*, 20 T., 29.

The acquisition of a new homestead is not absolutely essential to the abandonment of the old. *Reece v. Renfro*, 68 T., 194.

Abandonment may be shown by long absence of the family, together with other circumstances which tend to show abandonment. *Sanford v. Shern*, 66 T., 655, 2 S. W. R., 805.

Where there has been no acquirement of a new homestead, the total abandonment of the old home-



stead, with an intention not to return, must be clearly proven. *Thomas v. Williams*, 50 T., 275; *Smith v. Uzzell*, 56 T., 315; *Cline v. Upton*, 56 T., 323; *Reece v. Renfro*, 68 T., 194, 4 S. W. R., 545.

One does not lose homestead rights until he leaves it with an intent not to return to it as a place of residence. *Graves v. Campbell*, 74 T., 577, 12 S. W. R., 239.

The declaration of one claiming a homestead, when moving from the property, are admissible to show whether or not there exists an intention of abandonment. *Cline v. Upton*, 56 T., 323.

The actual use of a place for the convenience of a family is the best evidence of the intention to make it a part of the homestead. And declarations of husband and wife will not divert the property, used as a home, of its homestead character. *Kaufman v. Ruhl*, 65 T., 723; *Jacobs v. Hawkins*, 63 T., 1; *Medlenka v. Dowling*, 59 T., 32.

Where owner has not ceased to occupy homestead as such, no statement that it is not his homestead—no amount of preparation or intent on his part—will destroy it of its homestead character or permit an incumbrance. *Tex. & Co. v. Blalock*, 76 T., 89, 13 S. W. R., 12; *Mort. Co. v. Norton*, 71 T., 683, 10 S. W. R., 301; *Pellant v. Decker*, 72 T., 581, 10 S. W. R., 696; *Kenner v. Connet*, 73 T., 203, 11 S. W. R., 194.

If parties are not living on the property when the lien was given, their declarations that such property was not their homestead, when relied upon, estops the parties. *Mort. Co. v. Norton*, 71 T., 687, 10 S. W. R., 301.

#### BUSINESS HOMESTEAD.

This section extends the exemption to the place of business of the head of the family. *Miller v. Menke*, 56 T., 539; *Wright v. Straub*, 64 T., 64; *Inge v. Cain*, 65 T., 75; *Wynne v. Hudson*, 66 T., 1, 17 S. W. R., 110.

This section places two limitations upon exempt

property as a business homestead. It shall not exceed \$5,000 in value, together with the resident homestead, at the time designated as a homestead, and it shall be used as a place to exercise the calling or profession of the head of the family. *Willis v. Morris*, 66 T., 629, 1 S. W. R., 799.

The protection of a business homestead exists only as long as it is used for the purposes contemplated in this section. And it does not protect a man in a place of business, which he is not using. The fact that he was contemplating resuming business in the house at some future time, is not sufficient to make it exempt. *Shylock v. Latimer*, 57 T., 675.

The erection of a building, connected with a business house to be leased to tenants, can not be exempt as a place of business. *Hargadene v. Whitfield*, 71 T., 482, 9 S. W. R., 475.

This principle does not apply to a merchant in failing circumstances, and if he fails he has a reasonable time to engage in a new business, and during that time the place is exempt as a business homestead, and the fact that he engages in some other business does not destroy the exemption. *Id.*

A place of business was not exempt until this constitution went into effect, namely, the 18th of April, 1876. *Wright v. Straub*, 64 T., 66.

The business homestead must be used in carrying on the business of the head of the family. *Faust v. Sanger*, 13 C. A., 410, 35 S. W. R., 404.

If a man lives in the country, his place of business in town is not exempt. *Posey v. Bass*, 77 T., 514.

The business homestead is exempt whether it is detached from the residence or not. *Taylor v. Ferguson*, 87 T., 1, 26 S. W. R., 46; *Wynne v. Hudson*, 66 T., 10, 17 S. W. R., 110.

Where the lots used as a place of business are separate from the residence their exemption can only be kept up by continued use. *Willis v. Menke*, 56 T.,

564; *Willis v. Pounds*, 25 S. W. R., 572, 6 C. A., 715; *Frost v. Sanger*, 35 S. W. R., 404.

The intention of the parties must be looked to in order to determine whether a business homestead has been abandoned. *Tackaberry v. Bank*, 85 T., 493, 22 S. W. R., 151-299.

A warehouse in which goods are kept in bulk is not a part of the homestead. *Hinzie v. Moody*, 1 C. A., 30, 20 S. W. R., 769.

Where a part of a lot or lots is used as a business homestead the remaining portion is exempt, unless used for a different purpose. *Larell v. Lapouski*, 85 T., 170, 19 S. W. R., 1004; *Hargadene v. Whitfield*, 71 T., 89, 9 S. W. R., 475.

A member of a failing firm who is a notary public and mayor of his town is entitled, after the failure of the firm, to a place to carry on his business as mayor or notary. *Pfeiffer v. McNatt*, 74 T., 642, 12 S. W. R., 821.

Enlargement of a business homestead is not subject to forced sale. *Hargadene v. Whitfield*, 71 T., 489, 9 S. W. R., 475.

The rent of a business homestead is not exempt. *Hinzie v. Moody*, 13 C. A., 193, 35 S. W. R., 832.

One living in town cannot, without an intention of removing to the country, claim a farm on which he carries on the business of horse breeding. *Exall v. Trust Co.*, 15 C. A., 643, 39 S. W. R., 959.

The mere will of the wife that a place of business shall remain a part of the homestead after the business has ceased will not make it exempt. *Wynne v. Hudson*, 66 T., 10, 17 S. W. R., 110.

A cattle dealer and land agent cannot claim a business homestead in a store house which he has rented out and in which he has a safe and has privilege of writing in it. *Houston v. Newsome*, 82 T., 80, 17 S. W. R., 603.

It is immaterial if the business carried on is in the name of another, if it is conducted in favor of the family, nor is it material that the business conducted

is carried on in fraud of creditors. *King v. Harter*, 70 T., 579, 8 S. W. R., 308.

The business homestead, at the death of the husband, descends to his wife and minor children, free from all debts of the husband. *Clift v. Kaufman*, 60 T., 64.

If the owner of a business lot leases it during his temporary engagement in another business the exemption is not lost. *Bowman v. Watson*, 66 T., 295, 1 S. W. R., 273.

A place where business is prohibited by the penal laws is not protected by this section. *Tillman v. Brown*, 64 T., 181; *Swayne v. Chase*, 88 T., 225, 30 S. W. R., 1049.

A lot other than the one where the business is conducted, although useful and profitable to the business, is not exempt. *McDonald v. Campbell*, 57 T., 614.

If a person ceases to use a place of business and rents it from year to year, it loses its homestead exemption. *Oppenheimer v. Fritter*, 79 T., 92.

A widow having ceased to use a place of business, such cessation amounts to an abandonment of the business homestead. *Harle v. Richards*, 78 T., 180, 14 S. W. R., 257.

To constitute a business homestead there must exist a head of a family, he must have a calling to which the place is adapted, it must be used as such and must be necessary to the profession or calling. *Pfeiffer v. McNutt*, 74 T., 641, 12 S. W. R., 821; *Hill v. Hill*, 85 T., 103, 19 M., 1016; *Duncan v. Alexander*, 83 T., 441, 18 S. W. R., 817; *McDonald v. Campbell*, 57 T., 614.

Where lot was not used, nor was it adapted or reasonably necessary for the business pursued by the husband, it did not constitute a business homestead. *Hill v. Hill*, 85 T., 103, 19 S. W. R., 1066.

The lapse of eight days between cessation of business and sale of property does not destroy the exemption. *Scheuber v. Ballow*, 64 T., 166.

This section relating to business homesteads does not restrict the business or calling to any single branch. *Schneider v. Campbell*, 21 S. W. R., 55, 1 C. A., 314.

The husband may in good faith abandon a part of the business homestead, and the abandoned part will become subject to sale. *Achinhoold v. Jacobs*, 69 T., 248, 6 S. W. R., 177; *Wynne v. Hudson*, 66 T., 117, S. W. R., 110; *Inge v. Cain*, 65 T., 75; *Morris v. Geiske*, 60 T., 663; *Shylock v. Latimer*, 57 T., 674; *Bowman v. Watson*, 66 T., 295, 1 S. W. R., 273; *Malone v. Kornrumpf* 84 T., 454, 19 S. W. R., 607; *Kaufman v. Foreman*, 73 T., 308, 11 S. W. R., 278; *Clift v. Kaufman*, 60 T., 64; *Blackburn v. Knight*, 81 T., 326, 16 S. W. R., 1075; *Cline v. Upton*, 56 T., 320.

See where it was held that a place of business was exempt, although the business had been abandoned and the house rented out. *Korn v. Rumph*, 84 T., 459, 19 S. W. R., 607.

If one has a rural residence he cannot claim an urban place of business as a part of his homestead. *Williams v. Willis*, 84 T., 400, 19 S. W. R., 683.

A lot in town exempt as a business homestead can not be connected with a rural home. *Swearinger v. Bassett*, 65 T., 271.

If the business of the head of the family is to carry on a hotel and livery business, an adjacent lot on which is the hotel and livery, is exempt. *Schneider v. Campbell*, 1 C. A., 314, 21 S. W. R., 55.

Where one using a business homestead as commission merchant, who had not obtained license to carry on his business, has a right to a business homestead exemption. *Gassoway v. White*, 70 T., 479, 8 S. W. R., 117.

A place of business will be considered a part of the homestead, after it has ceased to be used as such, provided it is used as a home. *Wynne v. Hudson*, 66 T., 10, 17 S. W. R., 110.

The mere intention to resume business in a store house which had been abandoned as a place of business, does not exempt the property. *Hull v. Nauberg*, 1 C.



A., 136, 20 S. W. R., 1125; *Shylock v. Latimer*, 57 T., 674; *Pfeiffer v. McNatt*, 74 T., 640, 12 S. W. R., 821.

The constitutions of 1845, 1866, 1869, did not exempt business homestead. *Inge v. Cain*, 65 T., 75; *Iken v. Olenick*, 42 T., 195.

#### URBAN HOMESTEAD.

An urban homestead may consist of any number of lots, as long as their aggregate value does not exceed the value allowed. *Iken v. Olenick*, 42 T., 201.

In order for a homestead to be urban, it is not necessary that the town should be incorporated. *Williams v. Willis*, 84 T., 400, 19 S. W. R., 683; *Iken v. Olenick*, 42 T., 197.

If lots are used as a homestead the fact that they are several miles apart will not destroy the homestead character. *Brooks v. Chatham*, 57 T., 33.

The term "town or city lot or lots" does not embody farm lots when they lie beyond the limits of the town proper, although they are within the jurisdictional limits of the town. *Rodgers v. Ragland*, 42 T., 442.

Improvements must be included in estimating the value of an urban homestead. *McLane v. Paschal*, 62 T., 105. (*Hancock v. Morgan*, 17 T., 585; *Pryor v. Stone*, 19 T., 373; *North v. Shearn*, 15 T., 176; *Ragland v. Rogers*, 34 T., 621, also 31 T., 685).

A blacksmith had a residence on a town lot. A thousand yards away he had ten acres lying partly in town and partly in the country. On the ten acres he raised vegetables for his family. Held they were not exempt. *Rogers v. Ragland*, 42 T., 443; *Evans v. Womack*, 48 T., 232; *Andrews v. Hagadon*, 54 T., 575; *Keith v. Hyndeman*, 57 T., 429.

Under the former constitutions of Texas, in order for several city lots to constitute one homestead, they had to be used for homestead purposes. *Inge v. Cain*, 65 T., 78.

Houses erected on city lots for the purpose of rent-

ing, together with the land occupied by them, are not exempt. *Hendrick v. Hendrick*, 13 C. A., 49, 34 S. W. R., 804.

It is not necessary under this section that a block of ground, enclosed and attached to a homestead, should be necessary to the enjoyment of that homestead, in order to be exempt. *Arto v. Maydole*, 54 T., 247.

The mere ownership of a vacant lot, unconnected with the residence lots, will not make it a part of the homestead. *Taylor v. Boyd*, 63 T., 540 (*Methevy v. Walker*, 17 T., 593).

#### RURAL HOMESTEAD.

A homestead can not be both urban and rural. *Williams v. Willis*, 84 T., 398, 19 S. W. R., 683; *Keith v. Hyndeman*, 57 T., 425; *Swearinger v. Bassett*, 65 T., 271; *Iken v. Olenick*, 42 T., 125; *Foust v. Songer*, 13 C. A., 410.

Where the lots are detached from the urban residence, the lots used as a business homestead can only be kept up by continued use. In this respect the urban and rural homestead differ. *Miller v. Menke*, 56 T., 240.

An urban homestead may consist of one or more lots, connected with or contributing by their use to the comforts of a home. *Iken v. Olenick*, 42 T., 195.

A rural homestead is not lost by a temporary absence for the purpose of schooling the children. *Reinstein v. Daniels*, 75 T., 640, 13 S. W. R., 21; *Aultman v. Allen*, 33 S. W. R., 679.

The extension of the corporate limits of the town, to include a rural homestead and the laying out of contiguous streets into lots, will not destroy the homestead of its rural character. *Watkins Mortgage Co. v. Abbott*, 37 S. W. R., 252; *Neeley v. Chase*, 32 S. W. R., 785 (*Taylor v. Boulware*, 17 T., 74; *Bassett v. Messnue*, 30 T., 604); *Posey v. Bass*, 77 T., 514, 14 S. W. R., 456 (*Nolan v. Reed*, 38 T., 427).

Every one has a right to live in the country,



although he conducts his business in town. *Posey v. Bass*, 77 T., 514, 14 S. W. R., 156.

Where a family lived on town property which was leased, one-half of the term having expired, they can not assert any homestead rights in rural property which has never been their residence. *Johnson v. Martin*, 81 T., 21, 16 S. W. R., 550.

This section does not mean to protect 200 acres of the most valuable land, but it does protect the house and the farm and whatever is used in connection with the residence to support the family. *I. and G. N. Ry. Co. v. Winter*, 44 T., 611.

Where a new tract has been acquired, it must be of such use, in order to exempt it as a homestead, as would have been required to make it an original homestead. *Brooks v. Chatman*, 57 T., 33.

The rural homestead may consist of more than one tract. *Foreman v. Meroney*, 62 T., 728 (*Williams v. Hull*, 33 T., 214; *Pryor v. Stone*, 19 T., 373; *Hancock v. Morgan*, 17 T., 586).

Head of family can not have two residence homesteads. *Achilles v. Willis*, 81 T., 171, 16 S. W. R., 746.

Where a rural homestead has been surveyed under owner's directions and his interest in adjoining land has been sold under execution, the owner can not change the lines of his homestead so as to defeat the purchaser under the execution. *Kent v. Beaty*, 40 T., 441.

Whether or not a homestead is rural or urban is fixed at the time it is designated as a home, and whether or not it has been changed is a question of fact. The lines of the municipality do not determine it. *Wilder v. McConnell*, 91 T., 603, 45 S. W. R., 145.

A farm of thirty-three acres, nine acres of which were within the limits of a town and the rest on the outside. The outside lots were used as a farm and were not laid out into lots. Held it was exempt as a

rural homestead. *Watkins v. Abbott*, 14 C. A., 447, 37 S. W. R., 252.

Where a homestead is brought into the limits of a town over the protest of the owner, but he acquiesces in the dedication of streets through his property, the homestead is changed to an urban one. *Waggener v. Haskell*, 13 C. A., 630, 35 S. W. R., 711; *Waggener v. Haskell*, 89 T., 435, 35 S. W. R., 711.

SEC. 52. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

The object of this section was to provide for the equal distribution of the homestead among the heirs of the owner, when it becomes subject to distribution. *Childers v. Henderson*, 76 T., 666, 13 S. W. R., 481.

The clause "Shall descend and vest like other real property" does not mean that the homestead shall be subject to administration in favor of creditors. *Id.*

The homestead of an insolvent decedent vests absolutely in his heirs. *Stephenson v. Marsalis*, 33 S. W. R., 383, 11 C. A., 162.

The homestead is not subject to partition as long

as the husband and wife elect to occupy it; or long as the court shall permit a guardian with minor children of deceased to occupy it. *Hudgins v. Sansom*, 72 T., 229, 10 S. W. R., 104.

Homestead descends free from execution for debts. *Hooper v. Caruthers*, 78 T., 432.

An order of the probate court, setting apart a lot not property of decedent, as a part of homestead, to widow and children, does not effect the owners. *McDougal v. Bradford*, 80 T., 558, 16 S. W. R., 619.

Minor children of a divorced husband, who live with their mother, have homestead rights in the estate of their father. *Hall v. Fields*, 81 T., 559, 17 S. W. R., 82.

Minor children's rights to homestead cannot be destroyed by will. *Id.*

Children have no interest in the homestead as such by virtue of homestead rights of the deceased parent. *Johnson v. Taylor*, 43 T., 122; *Shannon v. Gray*, 59 T., 252; *Grothaus v. Delopez*, 57 T., 672.

The guardian of the estate of a minor cannot deprive the guardian of the person of the minor, the right to occupy the homestead with the minor ward, and to use it for the purposes of a home. *Hudgins v. Sansom*, 72 T., 232, 10 S. W. R., 104.

If the husband abandons wife, he forfeits his interest in the homestead of the separate property of his deceased wife. *Hector v. Knox*, 63 T., 613.

Occupancy is only required as against the rights of decedents of the deceased to partition the property. *Schneider v. Bray*, 59 T., 668.

Children have no interest in homestead as such, against surviving parent, on account of homestead rights of their deceased parent. *Watts v. Miller*, 76 T., 13, 13 S. W. R., 16; *Fagan v. McWhirter*, 71 T., 567, 9 S. W. R., 677; *Ashe v. Yurgst*, 65 T., 636.

The homestead in insolvent estates descends as other property subject to use by widow and minor children free from debts of the deceased. *Cameron v.*

Morris, 83 T., 14, 18 S. W. R., 422; Zwerman v. Von Rosenberg, 76 T., 522, 13 S. W. R., 485.

Minor children must assert their rights through a duly appointed guardian. Hall v. Fields, 81 T., 533, 17 S. W. R., 82.

The prohibition against partition is against those who claim as heirs of the estate of the decedent, and not to those claiming an interest through other titles. Clements v. Lacy, 51 T., 150; Pressley heirs v. Robinson, 57 T., 453; Gilliam v. Null, 58 T., 298.

Families are not required to live on the land. They can lease it through convenience or necessity, it matters not how long, provided no title is required to another homestead, occupied and used as such. Foreman v. Meroney, 62 T., 723.

The homestead and exempt property, all consisting of community property, pass to the wife free from the debts of the community; and upon her decease the property descends to her collateral heirs, free from debts. Zwerman v. Von Rosenberg, 76 T., 522, 13 S. W. R., 485; Childers v. Henderson, 76 T., 664, 13 S. W. R., 481.

A wife abandoning her husband and homestead, which was separate property of husband, has no right to the homestead upon his death. Cockrell v. Curtis, 83 T., 105, 18 S. W. R., 436; Newland v. Holland, 45 T., 589; Hall v. Fields, 81 T., 553, 17 S. W. R., 82.

When husband dies possessed of a community homestead of himself and former wife, children of the former marriage are entitled to the community interest of their mother. Presslys heirs v. Robinson, 57 T., 453; Putnam v. Young, 57 T., 461.

The widow of the second marriage has half interest in the old homestead, used as such at the death of the first wife. *Id.*

If no constituent of the family exists, the homestead can be sold to pay debts. Cameron v. Morris, 83 T., 14, 18 S. W. R., 422; Childers v. Henderson, 76 T., 664, 13 S. W. R., 481; Zwerman v. Von Rosenberg, 76 T., 552, 13 S. W. R., 485.

If property of deceased husband be improperly set apart to widow as her homestead, she is liable to the minor children for rents. *Linch v. Broad*, 70 T., 92, 6 S. W. R., 751.

A person can not by will dispose of homestead to which widow and minor children are entitled. *Hall v. Fields*, 81 T., 553, 17 S. W. R., 82.

The rural homestead must be set apart as a whole. A person by will can not direct a partition. *Id.*

Temporary renting does not prevent the homestead from descending as such. *Bowman v. Watson*, 66 T., 295, 1 S. W. R., 273; *Axer v. Bassett*, 63 T., 545; *Blum v. Whitlock*, 66 T., 350, 1 S. W. R., 108.

Upon the death of the husband, leaving a widow the only constituent of the family, she is entitled to the property as a homestead. *Lacy v. Lockett*, 82 T., 193, 17 S. W. R., 916.

The homestead of an insolvent husband descends free from debts. *Cameron v. Morris*, 83 T., 17, 18 S. W. R., 422.

See while the land could not be partitioned during its occupancy by a widow and her minor son, yet their fee in the land was subject to sale. *Harle v. Richards*, 14 S. W. R., 257.

See where partition can only be protected through the agency of a regular guardian under authority and permission of the probate court. *Osborn v. Osborn*, 13 S. W. R., 538.

Community land used as homestead by surviving husband and minor children can not be partitioned during the lifetime of the husband or the minority of the children. *Adair v. Hare*, 73 T., 273, 11 S. W. R., 320.

The fact that child and guardian, without order of court, rented out land and collected the rents from them, and his reports accounting for the rents were approved by the probate court, is not equivalent to an order authorizing the guardian and his ward to occupy the land to the exclusion of other heirs. *Gaines v. Gaines*, 23 S. W. R., 465.



On the death of her husband the probate court has no right to set apart as a homestead to the third wife and the minor children the interest in the land which descended to the other heirs of the second wife. *McDougal v. Bradford*, 80 T., 558, 16 S. W. R., 619.

Upon death of insolvent husband the homestead falls to the use of his surviving wife and children. *West v. West*, 29 S. W. R., 242.

Since at time of levy appellee had no family, his property was not exempt and did not descend as a homestead. *Bahn v. Starcie*, 34 S. W. R., 104.

This section refers only to descent of land to the heirs of one of the spouses, occupying it at the time of the death. *Gilliam v. Null*, 58 T., 299.

The prohibition against partition is against those who claim as heirs of the estate of the decedent and not to those claiming any interest in the land through other titles. *Gilliam v. Null*, 58 T., 299.

While the fee of the land descends to the children of the first marriage, it is subject to the homestead rights of the widow of the second marriage in the interest owned by her husband.

*Id.* *Clements v. Lacy*, 51 T., 165, *Pressler's heirs v. Robinson*, 57 T., 453. See where homestead would not be exempt, surviving wife having died, no constituents of a family being left. *Watson v. Rainey*, 69 T., 319, 6 S. W. R., 840.

Surviving husband is not liable to children, by reason of his occupancy of the entire homestead, no partition having been demanded. *Pressler's heirs v. Robinson*, 57 T., 454.

Mother and sister of deceased, who together with the deceased constituted a family, are not entitled to any of his homestead against creditors. *Roots v. Robertson*, 55 S. W. R., 308.

This section does not attempt to declare under what circumstances, property used during the life time of a deceased person as a homestead shall be exempted from forced sale to satisfy debts against the estate. *Givens v. Hudson*, 64 T., 471.

This section does not perpetuate the homestead exemption from sale to satisfy a debt of the surviving member of the material relation after his or her death, when no constituent of the family remains. *Id.*

Where homestead descended to heirs of an insolvent and a minor daughter continued to occupy it as a homestead, without any letters of guardianship, this occupation will not prevent the interest of other adult heirs in the property from being sold under execution. *Bell v. Read*, 56 S. W. R., 584.

The mother and sister of deceased, who were dependent on him and constituted his sole family, are not entitled to any of his homestead rights as against creditors. *Roots v. Robertson*, 55 S. W. R., 308.

SEC. 53. That no inconvenience may arise from the adoption of this constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this constitution is adopted, shall remain valid, and shall not be in any way affected by the adoption of this constitution.

SEC. 54. It shall be the duty of the legislature to provide for the custody and maintenance of indigent lunatics, at the expense of the state, under such regulations and restrictions as the legislature may prescribe.

SEC. 55. The legislature may provide annual pensions, not to exceed one hundred and fifty dollars per annum, to surviving soldiers or volunteers in the



war between Texas and Mexico, from the commencement of the revolution in 1835, until the 1st of January, 1837; and also to the surviving signers of the declaration of independence of Texas; and to the surviving widows, continuing unmarried, of such soldiers and signers; *provided*, that no such pension be granted except to those in indigent circumstances, proof of which shall be made before the county court of the county where the applicant resides, in such manner as may be provided by law.

SEC. 56. The legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a bureau of immigration, or for any purpose of bringing immigrants to this state.

SEC. 57. Three millions acres of the public domain are hereby appropriated and set apart for the purpose of erecting a new state capitol and other necessary public buildings at the seat of government; said lands to be sold under the direction of the legislature; and the legislature shall pass suitable laws to carry this section into effect.



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ARTICLE XVII.

MODE OF AMENDING THE CONSTITUTION  
OF THIS STATE.

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## ARTICLE XVII.

## MODE OF AMENDING THE CONSTITUTION OF THIS STATE.

SEC. 1. The legislature, at any biennial session, by a vote of two-thirds of all the members elected to each house, to be entered by yeas and nays on the journals, may propose amendments to the constitution, to be voted upon by the qualified electors for members of the legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the legislature, in one weekly newspaper of each county in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election to open a poll for, and make returns to the secretary of state of the number of legal votes cast at said election for and against said amendments; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return that a majority of the votes cast have been cast in favor of any amendment the said amendment so receiving a majority of the votes cast shall become a part of the

constitution, and proclamation shall be made by the governor thereof.

An amendment to the constitution takes effect forty days from the day of election and not before. *Irrigation Ditch Co. v. Hudson*, 85 T., 588, 22 S. W. R., 398; *Schwartz vs. Tiberson*, 2 App. C. C., Sec. 289.

The amendment to Art. 5, by adding Sec. 29, did not become operative until the 23rd day of September, 1883. *Carothers v. Wilkerson*, 2 App. C. C., Section 356.

It is the ascertained majority of the people, and not the proclamation of the governor which gives operation and force to an amendment, receiving such majority vote. *Wilson v. St.*, 15 Cr. App., 150.

Amendment of Article 5, Section 17, voted on the 14th day of August, 1883, went into effect 23rd of September, 1883. *Id*; *Pacific Ry. Co. v. Graves*, 2 App. C. C., Sec. 677; *Schwartz v. Tiberson*, 2 App. C. C., Sec. 289.

The fact that a majority vote has been cast in favor of an amendment does not give it operative force from the day of election. *Sewall v. St.*, 15 Cr. App., 61.

The adoption of a constitutional amendment is at the time is voted on. *Baker v. St.*, 24 S. W. R., 31; (Cr. App).

Art. 5, Sec. 16 was adopted on the second Tuesday in August, 1891. *Id*.

The amendment of Art. 8, Sec. 9 was ratified Aug. 18, 1883, but did not become operative until forty days thereafter, and was not in force until proclaimed by the governor. *Gas Co. v. Cleburne*, 21 S. W. R., 193; *Ellis v. City of Cleburne*, 35 S. W. R., 495

Done by the delegates of the people of Texas, in convention assembled, in the City of Austin, on this, the 24th day of November, in the year of our Lord, one thousand eight hundred and seventy-five.

In testimony whereof, we hereunto subscribe our names:

EDWARD B. PRICKETT,  
*President of the Convention.*

LEIGH CHAMBERS,  
*Secretary of the Convention.*

NICHOLS H. DARNELL,  
of Tarrant Co.

JOEL W. ROBINSON,  
of Fayette Co.

BENNETTE BLAKE,  
of Nacogdoches Co.

BUCKNER ABERNATHY,  
of Camp Co.

D. ABNER,  
of Harrison Co.

THOMAS G. ALLISON,  
of Panola Co.

JULIUS E. ARMIN,  
of Lavaca Co.

EDWARD CHAMBERS,  
of Collin Co.

HENRY CLINE,  
of Harris Co.

WILLIAM D. S. COOK,  
of Gonzales Co.

G. B. COOK,  
of San Saba Co.

W. L. CRAWFORD,  
of Marion Co.

B. H. DAVIS,  
of Brazos Co.

BURRILL B. DAVIS,  
of Wharton Co.

JAMES L. GERMAN,  
of Falls Co.

A. C. GRAVES,  
of Coryell Co.

JAMES E. HAYNES,  
of Caldwell Co.

JOHN R. HENRY,  
of Limestone Co.

JOHN L. HENRY,  
of Smith Co.

WILLIAM C. HOMES,  
of Grayson Co.

ASA HOLT,  
of Van Zant Co.

JOHN JOHNSON,  
of Collin Co.

J. F. JOHNSON,  
of Franklin Co.

C. B. GILGORE,  
of Gregg Co.

SAM B. KILLOUGH,  
of Robertson Co.

HENRY C. KING,  
of Kendall Co.

ROBERT LACY,  
of Leon Co.

THOMAS J. LOCKETT,  
of Washington Co.



WILLIAM W. DILLARD,  
of Bowie Co.  
E. L. DOHONEY,  
of Lamar Co.  
J. W. FERRIS,  
of Ellis Co.  
JOSEPH P. DOUGLASS,  
of Cherokee Co.  
J. R. FLEMMING,  
of Comanche Co.  
GEORGE FLOURNOY,  
of Galveston Co.  
JOHN S. FORD,  
of Cameron Co.  
JAMES G. GAITHER,  
of Falls Co.  
W. B. BALLINGER,  
of Galveston Co.  
JO. W. BARNETT,  
of Parker Co.  
WILLIAM BLASSINGAME,  
of Grayson Co.  
E. W. BRADY,  
of Grimes Co.  
JOHN HENRY BROWN,  
of Dallas Co.  
H. C. BRUCE,  
of Johnson Co.  
ED BURLESON,  
of Hays Co.  
MARION MARTIN,  
of Navarro Co.  
B. D. MARTIN,  
of Hunt Co.  
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of Walker Co.  
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of Titus Co.  
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of Rusk Co.  
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of Harrison Co.  
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of Williamson Co.  
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of Cass Co.  
G. A. SESSIONS,  
of Freestone Co.  
C. R. SMITH,  
of Milam Co.  
ISRAEL SPIKES,  
of Kaufman Co.  
WILLIAM H. STEWART,  
of Galveston Co.  
FLETCHER S. STOCKDALE  
of Calhoun Co.  
H. W. WADE,  
of Hunt Co.  
W. T. G. WEAVER,  
of Cook Co.  
C. S. WEST,  
of Travis Co.  
W. W. WHITEHEAD,  
of Tyler Co.

J. B. MURPHY,  
of Nueces Co.  
LIPSCOMB NORVELL,  
of Jasper Co.  
THOMAS L. NUGENT,  
of Erath Co.  
D. A. NUNN,  
of Houston Co.  
WILLIAM NEAL RAMEY,  
of Shelby Co.  
JOHN H. REAGAN,  
of Anderson Co.  
ROBERT B. RENTFRO,  
of Montgomery Co.

E. S. C. ROBERTSON,  
of Bell Co.  
W. REYNOLDS,  
of Waller Co.  
L. S. ROSS,  
of McLennan Co.  
JOHN W. WHITEFIELD,  
of Lavaca Co.  
W. B. WRIGHT,  
of Lamar Co.  
CHARLES DEMORSE,  
of Red River Co.



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